

1                                   **STATUTORY CONSTRUCTION COMPLIANCE**

2   **AMENDMENTS**

3   2010 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Rebecca D. Lockhart**

6   Senate Sponsor: Stephen H. Urquhart

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8   **LONG TITLE**

9   **General Description:**

10                   This bill amends provisions of Titles 3 through 16 of the Utah Code by correcting  
11 terms to comply with rules of statutory construction applicable to the Utah Code.

12   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ amends provisions of Titles 3 through 16 of the Utah Code by correcting terms to
- 15 comply with rules of statutory construction applicable to the Utah Code; and
- 16                   ▶ makes technical changes.

17   **Monies Appropriated in this Bill:**

18                   None

19   **Other Special Clauses:**

20                   None

21   **Utah Code Sections Affected:**

22   AMENDS:

- 23                   **3-1-1**, Utah Code Annotated 1953
- 24                   **3-1-9**, as last amended by Laws of Utah 2007, Chapter 306
- 25                   **3-1-11**, as last amended by Laws of Utah 2005, Chapter 110
- 26                   **3-1-13.8**, as enacted by Laws of Utah 1994, Chapter 204
- 27                   **3-1-14**, Utah Code Annotated 1953
- 28                   **3-1-15**, Utah Code Annotated 1953
- 29                   **3-1-15.1**, as enacted by Laws of Utah 1994, Chapter 204

30           **3-1-17**, as last amended by Laws of Utah 2007, Chapter 306  
31           **3-1-22**, Utah Code Annotated 1953  
32           **3-1-26**, Utah Code Annotated 1953  
33           **3-1-35**, as last amended by Laws of Utah 1994, Chapter 203  
34           **3-1-37**, as last amended by Laws of Utah 1994, Chapter 203  
35           **4-1-7**, as enacted by Laws of Utah 1979, Chapter 2  
36           **4-2-8.7**, as last amended by Laws of Utah 2009, Chapter 368  
37           **4-2-15**, as enacted by Laws of Utah 1985, Chapter 104  
38           **4-5-5**, as last amended by Laws of Utah 1990, Chapter 157  
39           **4-5-7**, as last amended by Laws of Utah 2007, Chapter 179  
40           **4-5-8**, as last amended by Laws of Utah 1990, Chapter 157  
41           **4-5-9**, as last amended by Laws of Utah 2008, Chapter 382  
42           **4-5-15**, as last amended by Laws of Utah 2007, Chapter 179  
43           **4-5-18**, as last amended by Laws of Utah 1990, Chapter 157  
44           **4-7-8**, as last amended by Laws of Utah 2003, Chapter 84  
45           **4-7-11**, as last amended by Laws of Utah 1995, Chapter 41  
46           **4-9-15**, as last amended by Laws of Utah 2008, Chapter 382  
47           **4-14-3**, as last amended by Laws of Utah 2009, Chapter 183  
48           **4-15-2**, as enacted by Laws of Utah 1981, Chapter 126  
49           **4-15-10**, as enacted by Laws of Utah 1981, Chapter 126  
50           **4-17-7**, as last amended by Laws of Utah 2009, Chapter 388  
51           **4-22-3**, as last amended by Laws of Utah 1996, Chapter 243  
52           **4-22-6**, as last amended by Laws of Utah 1999, Chapter 301  
53           **4-23-5**, as last amended by Laws of Utah 2008, Chapter 382  
54           **4-23-6**, as enacted by Laws of Utah 1979, Chapter 2  
55           **4-23-8**, as last amended by Laws of Utah 2004, Chapter 128  
56           **4-24-2**, as last amended by Laws of Utah 1997, Chapter 302  
57           **4-24-12**, as last amended by Laws of Utah 2007, Chapter 240

- 58           **4-24-20**, as last amended by Laws of Utah 1997, Chapter 302
- 59           **4-26-5**, as enacted by Laws of Utah 1979, Chapter 2
- 60           **4-29-2**, as enacted by Laws of Utah 1979, Chapter 2
- 61           **4-30-7.6**, as enacted by Laws of Utah 1999, Chapter 298
- 62           **4-31-16**, as last amended by Laws of Utah 2007, Chapter 179
- 63           **4-31-16.5**, as last amended by Laws of Utah 2008, Chapter 382
- 64           **4-32-3**, as last amended by Laws of Utah 2007, Chapter 179
- 65           **4-32-7**, as last amended by Laws of Utah 2008, Chapter 382
- 66           **4-32-16**, as enacted by Laws of Utah 1979, Chapter 2
- 67           **4-32-22**, as last amended by Laws of Utah 2007, Chapter 179
- 68           **4-35-7**, as last amended by Laws of Utah 1990, Chapter 157
- 69           **4-37-102**, as renumbered and amended by Laws of Utah 1994, Chapter 153
- 70           **4-37-109**, as last amended by Laws of Utah 2008, Chapter 382
- 71           **4-37-110**, as enacted by Laws of Utah 1994, Chapter 153
- 72           **4-37-202**, as enacted by Laws of Utah 1994, Chapter 153
- 73           **4-37-203**, as enacted by Laws of Utah 1994, Chapter 153
- 74           **4-37-204**, as last amended by Laws of Utah 2008, Chapter 69
- 75           **4-37-302**, as enacted by Laws of Utah 1994, Chapter 153
- 76           **4-37-303**, as enacted by Laws of Utah 1994, Chapter 153
- 77           **4-37-305**, as enacted by Laws of Utah 1994, Chapter 153
- 78           **4-37-402**, as enacted by Laws of Utah 1994, Chapter 153
- 79           **4-37-502**, as last amended by Laws of Utah 2007, Chapter 191
- 80           **4-37-503**, as last amended by Laws of Utah 2008, Chapter 69
- 81           **4-39-201**, as enacted by Laws of Utah 1997, Chapter 302
- 82           **4-39-205**, as enacted by Laws of Utah 1997, Chapter 302
- 83           **4-39-206**, as enacted by Laws of Utah 1997, Chapter 302
- 84           **4-39-302**, as enacted by Laws of Utah 1997, Chapter 302
- 85           **4-39-304**, as enacted by Laws of Utah 1997, Chapter 302

86           **4-39-305**, as enacted by Laws of Utah 1997, Chapter 302  
87           **4-39-306**, as enacted by Laws of Utah 1997, Chapter 302  
88           **6-1-3**, Utah Code Annotated 1953  
89           **6-1-9**, Utah Code Annotated 1953  
90           **6-1-15**, Utah Code Annotated 1953  
91           **7-1-303**, as enacted by Laws of Utah 1981, Chapter 16  
92           **7-1-309**, as enacted by Laws of Utah 1981, Chapter 16  
93           **7-1-607**, as enacted by Laws of Utah 1981, Chapter 16  
94           **7-1-612**, as enacted by Laws of Utah 1981, Chapter 16  
95           **7-1-806**, as enacted by Laws of Utah 1981, Chapter 16  
96           **7-2-9**, as last amended by Laws of Utah 2008, Chapter 382  
97           **7-2-10**, as last amended by Laws of Utah 1989, Chapter 267  
98           **7-2-12**, as last amended by Laws of Utah 1989, Chapter 267  
99           **7-5-2**, as last amended by Laws of Utah 2000, Chapter 300  
100          **7-5-4**, as last amended by Laws of Utah 1982, Chapter 6  
101          **7-5-7**, as last amended by Laws of Utah 2004, Chapter 89  
102          **7-5-8**, as last amended by Laws of Utah 1982, Chapter 6  
103          **7-5-11**, as last amended by Laws of Utah 1982, Chapter 6  
104          **7-7-2**, as last amended by Laws of Utah 1995, Chapter 49  
105          **7-7-4**, as last amended by Laws of Utah 1994, Chapter 200  
106          **7-7-7**, as last amended by Laws of Utah 1994, Chapter 200  
107          **7-7-14**, as last amended by Laws of Utah 1994, Chapter 200  
108          **7-7-15**, as last amended by Laws of Utah 1989, Chapter 267  
109          **7-7-17**, as enacted by Laws of Utah 1981, Chapter 16  
110          **7-7-19**, as last amended by Laws of Utah 1994, Chapter 200  
111          **7-7-21**, as last amended by Laws of Utah 1997, Chapter 111  
112          **7-7-26**, as last amended by Laws of Utah 1995, Chapters 20 and 198  
113          **7-7-29**, as last amended by Laws of Utah 1983, Chapter 8

- 114            **7-7-30**, as last amended by Laws of Utah 1983, Chapter 8
- 115            **7-7-32**, as last amended by Laws of Utah 1994, Chapter 200
- 116            **7-7-33**, as last amended by Laws of Utah 1994, Chapter 200
- 117            **7-7-43**, as enacted by Laws of Utah 1981, Chapter 16
- 118            **7-9-5**, as last amended by Laws of Utah 2003, Chapter 327
- 119            **7-9-19**, as enacted by Laws of Utah 1981, Chapter 16
- 120            **7-9-32**, as enacted by Laws of Utah 1981, Chapter 16
- 121            **7-14-5**, as enacted by Laws of Utah 1981, Chapter 16
- 122            **7-17-4**, as last amended by Laws of Utah 2002, Chapter 264
- 123            **7-17-6**, as enacted by Laws of Utah 1979, Chapter 124
- 124            **7-17-8**, as enacted by Laws of Utah 1979, Chapter 124
- 125            **7-17-9**, as enacted by Laws of Utah 1979, Chapter 124
- 126            **7-18a-301**, as enacted by Laws of Utah 1996, Chapter 63
- 127            **8-3-1**, Utah Code Annotated 1953
- 128            **9-3-407**, as last amended by Laws of Utah 2001, Chapter 151
- 129            **9-4-301**, as renumbered and amended by Laws of Utah 1992, Chapter 241
- 130            **9-4-602**, as last amended by Laws of Utah 2002, Chapter 185
- 131            **9-4-703**, as last amended by Laws of Utah 2006, Chapter 14
- 132            **9-4-914**, as last amended by Laws of Utah 2001, Chapter 319
- 133            **9-4-924**, as last amended by Laws of Utah 2001, Chapter 319
- 134            **9-6-203**, as renumbered and amended by Laws of Utah 1992, Chapter 241
- 135            **9-6-405**, as renumbered and amended by Laws of Utah 1992, Chapter 241
- 136            **9-6-504**, as last amended by Laws of Utah 2008, Chapter 382
- 137            **9-7-213**, as last amended by Laws of Utah 2008, Chapter 382
- 138            **9-7-504**, as last amended by Laws of Utah 2003, Chapter 47
- 139            **9-12-103**, as last amended by Laws of Utah 2008, Chapter 382
- 140            **9-12-201**, as renumbered and amended by Laws of Utah 1998, Chapter 336
- 141            **10-1-105**, as enacted by Laws of Utah 1977, Chapter 48

142           **10-1-108**, as last amended by Laws of Utah 1993, Chapter 4  
143           **10-1-109**, as enacted by Laws of Utah 1977, Chapter 48  
144           **10-1-112**, as enacted by Laws of Utah 1977, Chapter 48  
145           **10-1-113**, as enacted by Laws of Utah 1977, Chapter 48  
146           **10-2-109**, as last amended by Laws of Utah 2008, Chapter 16  
147           **10-2-303**, as last amended by Laws of Utah 2008, Chapter 19  
148           **10-2-403**, as last amended by Laws of Utah 2009, Chapters 205 and 273  
149           **10-2-510**, as last amended by Laws of Utah 1997, Chapter 389  
150           **10-2-614**, as enacted by Laws of Utah 1977, Chapter 48  
151           **10-3-508**, as enacted by Laws of Utah 1977, Chapter 48  
152           **10-3-608**, as last amended by Laws of Utah 1993, Chapter 4  
153           **10-3-702**, as enacted by Laws of Utah 1977, Chapter 48  
154           **10-3-704**, as enacted by Laws of Utah 1977, Chapter 48  
155           **10-3-717**, as enacted by Laws of Utah 1977, Chapter 48  
156           **10-3-905**, as enacted by Laws of Utah 1977, Chapter 48  
157           **10-3-907**, as enacted by Laws of Utah 1977, Chapter 48  
158           **10-3-912**, as last amended by Laws of Utah 1991, Chapter 221  
159           **10-3-1004**, as last amended by Laws of Utah 1977, Chapter 39  
160           **10-3-1011**, as enacted by Laws of Utah 1977, Chapter 48  
161           **10-3-1012.5**, as enacted by Laws of Utah 1991, Chapter 221  
162           **10-3-1306**, as last amended by Laws of Utah 1989, Chapter 147  
163           **10-5-103**, as enacted by Laws of Utah 1983, Chapter 34  
164           **10-5-107**, as last amended by Laws of Utah 2006, Chapter 178  
165           **10-5-114**, as enacted by Laws of Utah 1983, Chapter 34  
166           **10-5-115**, as enacted by Laws of Utah 1983, Chapter 34  
167           **10-6-111**, as last amended by Laws of Utah 2009, Chapter 350  
168           **10-6-116**, as last amended by Laws of Utah 1999, Chapter 300  
169           **10-6-123**, as enacted by Laws of Utah 1979, Chapter 26

- 170           **10-6-159**, as last amended by Laws of Utah 1993, Chapter 4
- 171           **10-7-4**, as last amended by Laws of Utah 2004, Chapter 207
- 172           **10-7-5**, Utah Code Annotated 1953
- 173           **10-7-18**, as last amended by Laws of Utah 2002, Chapter 90
- 174           **10-7-32**, Utah Code Annotated 1953
- 175           **10-7-71**, Utah Code Annotated 1953
- 176           **10-7-72**, Utah Code Annotated 1953
- 177           **10-7-73**, Utah Code Annotated 1953
- 178           **10-7-85**, as enacted by Laws of Utah 1977, Chapter 36
- 179           **10-8-15**, Utah Code Annotated 1953
- 180           **10-8-16**, Utah Code Annotated 1953
- 181           **10-8-17**, Utah Code Annotated 1953
- 182           **10-8-33**, Utah Code Annotated 1953
- 183           **10-8-36**, Utah Code Annotated 1953
- 184           **10-8-58.5**, as last amended by Laws of Utah 2008, Chapter 382
- 185           **10-9a-403**, as last amended by Laws of Utah 2008, Chapter 168
- 186           **10-9a-509.5**, as last amended by Laws of Utah 2008, Chapter 112
- 187           **10-9a-514**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 188           **10-9a-519**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 189           **10-11-2**, Utah Code Annotated 1953
- 190           **10-15-4**, as last amended by Laws of Utah 2008, Chapter 360
- 191           **11-8-1**, as enacted by Laws of Utah 1957, Chapter 30
- 192           **11-13-309**, as renumbered and amended by Laws of Utah 2002, Chapter 286
- 193           **11-13-311**, as last amended by Laws of Utah 2003, Chapter 21
- 194           **11-14-302**, as last amended by Laws of Utah 2006, Chapter 83
- 195           **11-14-308**, as last amended by Laws of Utah 2007, Chapter 303
- 196           **11-14-313**, as last amended by Laws of Utah 2006, Chapter 83
- 197           **11-14-315**, as last amended by Laws of Utah 2009, Chapter 388

198           **11-17-1.5**, as last amended by Laws of Utah 2005, Chapter 148  
199           **11-17-2**, as last amended by Laws of Utah 2009, Chapter 92  
200           **11-17-4**, as last amended by Laws of Utah 1986, Chapter 206  
201           **11-17-5**, as last amended by Laws of Utah 1986, Chapter 206  
202           **11-17-7**, as last amended by Laws of Utah 1986, Chapter 206  
203           **11-17-10**, as last amended by Laws of Utah 1987, Chapter 2  
204           **11-25-9**, as enacted by Laws of Utah 1977, Chapter 276  
205           **11-25-11**, as last amended by Laws of Utah 2006, Chapter 359  
206           **11-27-5**, as last amended by Laws of Utah 2009, Chapter 388  
207           **11-30-2**, as last amended by Laws of Utah 2007, Chapter 329  
208           **11-31-2**, as last amended by Laws of Utah 2007, Chapter 329  
209           **11-32-7**, as enacted by Laws of Utah 1987, Chapter 143  
210           **11-34-1**, as last amended by Laws of Utah 2007, Chapter 329  
211           **11-34-2**, as enacted by Laws of Utah 1987, Chapter 200  
212           **11-36-401**, as last amended by Laws of Utah 2009, Chapter 181  
213           **13-1-1**, as enacted by Laws of Utah 1983, Chapter 322  
214           **13-1a-6**, as last amended by Laws of Utah 2008, Chapter 382  
215           **13-2-6**, as last amended by Laws of Utah 2008, Chapter 382  
216           **13-5-3**, as last amended by Laws of Utah 1993, Chapter 4  
217           **13-5-12**, as last amended by Laws of Utah 1997, Chapter 10  
218           **13-5-16**, Utah Code Annotated 1953  
219           **13-7-1**, as last amended by Laws of Utah 1973, Chapter 18  
220           **13-7-2**, as last amended by Laws of Utah 1987, Chapter 92  
221           **13-11-6**, as last amended by Laws of Utah 1991, Chapter 268  
222           **13-11-19**, as last amended by Laws of Utah 1995, Chapter 198  
223           **13-11-20**, as last amended by Laws of Utah 1992, Chapter 30  
224           **13-11a-3**, as last amended by Laws of Utah 2009, Chapter 133  
225           **13-12-3**, as enacted by Laws of Utah 1975, First Special Session, Chapter 6

- 226           **13-12-4**, as enacted by Laws of Utah 1975, First Special Session, Chapter 6  
227           **13-12-7**, as enacted by Laws of Utah 1975, First Special Session, Chapter 6  
228           **13-13-4**, as enacted by Laws of Utah 1979, Chapter 147  
229           **13-14b-103**, as enacted by Laws of Utah 2003, Chapter 225  
230           **13-15-4**, as last amended by Laws of Utah 2009, Chapter 183  
231           **13-15-5**, as last amended by Laws of Utah 1987, Chapter 92  
232           **13-32-103**, as enacted by Laws of Utah 1999, Chapter 68  
233           **13-32-104**, as enacted by Laws of Utah 1999, Chapter 68  
234           **13-32-107**, as enacted by Laws of Utah 1999, Chapter 68  
235           **13-32a-109.8**, as last amended by Laws of Utah 2009, Chapter 272  
236           **13-34-104**, as last amended by Laws of Utah 2008, Chapter 382  
237           **13-34-105**, as last amended by Laws of Utah 2009, Chapter 372  
238           **13-34-107**, as last amended by Laws of Utah 2009, Chapter 183  
239           **13-41-102**, as last amended by Laws of Utah 2008, Chapter 382  
240           **13-42-105**, as last amended by Laws of Utah 2009, Chapters 183 and 229  
241           **13-42-106**, as enacted by Laws of Utah 2006, Chapter 154  
242           **13-42-111**, as last amended by Laws of Utah 2009, Chapters 183 and 229  
243           **13-42-113**, as enacted by Laws of Utah 2006, Chapter 154  
244           **13-42-117**, as last amended by Laws of Utah 2009, Chapter 229  
245           **13-42-118**, as last amended by Laws of Utah 2009, Chapter 229  
246           **13-42-119**, as last amended by Laws of Utah 2009, Chapter 229  
247           **13-42-120**, as last amended by Laws of Utah 2009, Chapter 229  
248           **13-42-121**, as enacted by Laws of Utah 2006, Chapter 154  
249           **13-42-122**, as last amended by Laws of Utah 2009, Chapter 229  
250           **13-42-132**, as last amended by Laws of Utah 2009, Chapter 183  
251           **13-42-137**, as enacted by Laws of Utah 2006, Chapter 154  
252           **13-42-138**, as enacted by Laws of Utah 2006, Chapter 154  
253           **14-1-20**, as last amended by Laws of Utah 2005, Chapter 64

254 **14-2-5**, as last amended by Laws of Utah 2005, Chapter 64  
255 **15-2-5**, as enacted by Laws of Utah 1971, Chapter 20  
256 **15-3-4**, Utah Code Annotated 1953  
257 **15-4-2**, Utah Code Annotated 1953  
258 **15-4-4**, Utah Code Annotated 1953  
259 **15-4-7**, Utah Code Annotated 1953  
260 **15-9-105**, as last amended by Laws of Utah 2008, Chapter 382  
261 **15-9-106**, as last amended by Laws of Utah 2008, Chapter 382  
262 **15-9-109**, as last amended by Laws of Utah 2009, Chapter 183  
263 **15-9-110**, as enacted by Laws of Utah 2001, Chapter 237  
264 **15-9-118**, as enacted by Laws of Utah 2001, Chapter 237  
265 **16-6a-709**, as last amended by Laws of Utah 2007, Chapter 315  
266 **16-6a-808**, as last amended by Laws of Utah 2001, Chapter 127  
267 **16-6a-1419**, as enacted by Laws of Utah 2000, Chapter 300  
268 **16-7-10**, Utah Code Annotated 1953  
269 **16-10a-103**, as last amended by Laws of Utah 2009, Chapter 388  
270 **16-10a-120**, as last amended by Laws of Utah 2008, Chapter 364  
271 **16-10a-201**, as enacted by Laws of Utah 1992, Chapter 277  
272 **16-10a-202**, as last amended by Laws of Utah 2008, Chapter 364  
273 **16-10a-401**, as last amended by Laws of Utah 2002, Chapter 222  
274 **16-10a-601**, as enacted by Laws of Utah 1992, Chapter 277  
275 **16-10a-602**, as enacted by Laws of Utah 1992, Chapter 277  
276 **16-10a-603**, as enacted by Laws of Utah 1992, Chapter 277  
277 **16-10a-604**, as enacted by Laws of Utah 1992, Chapter 277  
278 **16-10a-620**, as enacted by Laws of Utah 1992, Chapter 277  
279 **16-10a-621**, as enacted by Laws of Utah 1992, Chapter 277  
280 **16-10a-625**, as enacted by Laws of Utah 1992, Chapter 277  
281 **16-10a-704**, as last amended by Laws of Utah 1993, Chapter 184

- 282           **16-10a-705**, as enacted by Laws of Utah 1992, Chapter 277
- 283           **16-10a-706**, as enacted by Laws of Utah 1992, Chapter 277
- 284           **16-10a-707**, as enacted by Laws of Utah 1992, Chapter 277
- 285           **16-10a-720**, as last amended by Laws of Utah 2008, Chapter 364
- 286           **16-10a-722**, as last amended by Laws of Utah 2001, Chapter 218
- 287           **16-10a-723**, as enacted by Laws of Utah 1992, Chapter 277
- 288           **16-10a-725**, as enacted by Laws of Utah 1992, Chapter 277
- 289           **16-10a-727**, as enacted by Laws of Utah 1992, Chapter 277
- 290           **16-10a-730**, as enacted by Laws of Utah 1992, Chapter 277
- 291           **16-10a-732**, as enacted by Laws of Utah 1992, Chapter 277
- 292           **16-10a-801**, as enacted by Laws of Utah 1992, Chapter 277
- 293           **16-10a-803**, as enacted by Laws of Utah 1992, Chapter 277
- 294           **16-10a-808**, as enacted by Laws of Utah 1992, Chapter 277
- 295           **16-10a-822**, as enacted by Laws of Utah 1992, Chapter 277
- 296           **16-10a-823**, as enacted by Laws of Utah 1992, Chapter 277
- 297           **16-10a-825**, as enacted by Laws of Utah 1992, Chapter 277
- 298           **16-10a-904**, as enacted by Laws of Utah 1992, Chapter 277
- 299           **16-10a-1003**, as enacted by Laws of Utah 1992, Chapter 277
- 300           **16-10a-1007**, as enacted by Laws of Utah 1992, Chapter 277
- 301           **16-10a-1022**, as enacted by Laws of Utah 1992, Chapter 277
- 302           **16-10a-1023**, as enacted by Laws of Utah 2007, Chapter 85
- 303           **16-10a-1101**, as enacted by Laws of Utah 1992, Chapter 277
- 304           **16-10a-1102**, as enacted by Laws of Utah 1992, Chapter 277
- 305           **16-10a-1103**, as last amended by Laws of Utah 1993, Chapter 184
- 306           **16-10a-1202**, as enacted by Laws of Utah 1992, Chapter 277
- 307           **16-10a-1303**, as enacted by Laws of Utah 1992, Chapter 277
- 308           **16-10a-1320**, as enacted by Laws of Utah 1992, Chapter 277
- 309           **16-10a-1321**, as enacted by Laws of Utah 1992, Chapter 277

- 310           **16-10a-1322**, as enacted by Laws of Utah 1992, Chapter 277  
311           **16-10a-1323**, as enacted by Laws of Utah 1992, Chapter 277  
312           **16-10a-1325**, as enacted by Laws of Utah 1992, Chapter 277  
313           **16-10a-1330**, as last amended by Laws of Utah 2008, Chapter 364  
314           **16-10a-1402**, as enacted by Laws of Utah 1992, Chapter 277  
315           **16-10a-1404**, as enacted by Laws of Utah 1992, Chapter 277  
316           **16-10a-1406**, as enacted by Laws of Utah 1992, Chapter 277  
317           **16-10a-1407**, as last amended by Laws of Utah 2009, Chapter 388  
318           **16-10a-1434**, as enacted by Laws of Utah 1992, Chapter 277  
319           **16-10a-1506**, as enacted by Laws of Utah 1992, Chapter 277  
320           **16-10a-1507**, as enacted by Laws of Utah 1992, Chapter 277  
321           **16-10a-1510**, as enacted by Laws of Utah 1992, Chapter 277  
322           **16-10a-1533**, as enacted by Laws of Utah 1994, Chapter 31  
323           **16-10a-1607**, as last amended by Laws of Utah 2008, Chapter 364  
324           **16-11-6**, as enacted by Laws of Utah 1963, Chapter 20  
325           **16-11-8**, as last amended by Laws of Utah 2000, Chapters 71 and 261  
326           **16-11-15**, as last amended by Laws of Utah 1992, Third Special Session, Chapter 6  
327           **16-11-16**, as last amended by Laws of Utah 2002, Chapter 222  
328           **16-12-5**, as enacted by Laws of Utah 1965, Chapter 114  
329           **16-12-6**, as enacted by Laws of Utah 1965, Chapter 114  
330           **16-13-4**, as last amended by Laws of Utah 1992, Third Special Session, Chapter 6  
331           **16-13-5**, as last amended by Laws of Utah 1979, Chapter 55  
332           **16-13-9**, as last amended by Laws of Utah 1979, Chapter 55  
333           **16-13-11**, as enacted by Laws of Utah 1965, Chapter 27  
334           **16-16-111**, as enacted by Laws of Utah 2008, Chapter 363  
335           **16-16-112**, as enacted by Laws of Utah 2008, Chapter 363  
336           **16-16-113**, as enacted by Laws of Utah 2008, Chapter 363  
337           **16-16-114**, as enacted by Laws of Utah 2008, Chapter 363

- 338            **16-16-117**, as enacted by Laws of Utah 2008, Chapter 363
- 339            **16-16-118**, as enacted by Laws of Utah 2008, Chapter 363
- 340            **16-16-119**, as enacted by Laws of Utah 2008, Chapter 363
- 341            **16-16-201**, as enacted by Laws of Utah 2008, Chapter 363
- 342            **16-16-203**, as enacted by Laws of Utah 2008, Chapter 363
- 343            **16-16-204**, as enacted by Laws of Utah 2008, Chapter 363
- 344            **16-16-207**, as enacted by Laws of Utah 2008, Chapter 363
- 345            **16-16-301**, as enacted by Laws of Utah 2008, Chapter 363
- 346            **16-16-302**, as enacted by Laws of Utah 2008, Chapter 363
- 347            **16-16-304**, as enacted by Laws of Utah 2008, Chapter 363
- 348            **16-16-402**, as enacted by Laws of Utah 2008, Chapter 363
- 349            **16-16-403**, as enacted by Laws of Utah 2008, Chapter 363
- 350            **16-16-404**, as enacted by Laws of Utah 2008, Chapter 363
- 351            **16-16-405**, as enacted by Laws of Utah 2008, Chapter 363
- 352            **16-16-407**, as enacted by Laws of Utah 2008, Chapter 363
- 353            **16-16-501**, as enacted by Laws of Utah 2008, Chapter 363
- 354            **16-16-507**, as enacted by Laws of Utah 2008, Chapter 363
- 355            **16-16-508**, as enacted by Laws of Utah 2008, Chapter 363
- 356            **16-16-603**, as enacted by Laws of Utah 2008, Chapter 363
- 357            **16-16-801**, as enacted by Laws of Utah 2008, Chapter 363
- 358            **16-16-803**, as enacted by Laws of Utah 2008, Chapter 363
- 359            **16-16-804**, as enacted by Laws of Utah 2008, Chapter 363
- 360            **16-16-809**, as enacted by Laws of Utah 2008, Chapter 363
- 361            **16-16-813**, as enacted by Laws of Utah 2008, Chapter 363
- 362            **16-16-1001**, as enacted by Laws of Utah 2008, Chapter 363
- 363            **16-16-1002**, as enacted by Laws of Utah 2008, Chapter 363
- 364            **16-16-1004**, as enacted by Laws of Utah 2008, Chapter 363
- 365            **16-16-1202**, as enacted by Laws of Utah 2008, Chapter 363

- 366            **16-16-1205**, as enacted by Laws of Utah 2008, Chapter 363
- 367            **16-16-1208**, as enacted by Laws of Utah 2008, Chapter 363
- 368            **16-16-1209**, as last amended by Laws of Utah 2009, Chapter 388
- 369            **16-16-1212**, as enacted by Laws of Utah 2008, Chapter 363
- 370            **16-16-1213**, as enacted by Laws of Utah 2008, Chapter 363
- 371            **16-16-1303**, as enacted by Laws of Utah 2008, Chapter 363
- 372            **16-16-1402**, as enacted by Laws of Utah 2008, Chapter 363
- 373            **16-16-1405**, as enacted by Laws of Utah 2008, Chapter 363
- 374            **16-16-1406**, as enacted by Laws of Utah 2008, Chapter 363
- 375            **16-16-1407**, as enacted by Laws of Utah 2008, Chapter 363
- 376            **16-16-1503**, as enacted by Laws of Utah 2008, Chapter 363
- 377            **16-16-1504**, as enacted by Laws of Utah 2008, Chapter 363
- 378            **16-16-1602**, as enacted by Laws of Utah 2008, Chapter 363
- 379            **16-16-1603**, as enacted by Laws of Utah 2008, Chapter 363
- 380            **16-16-1604**, as enacted by Laws of Utah 2008, Chapter 363
- 381            **16-16-1606**, as enacted by Laws of Utah 2008, Chapter 363
- 382            **16-16-1607**, as enacted by Laws of Utah 2008, Chapter 363
- 383            **16-16-1608**, as enacted by Laws of Utah 2008, Chapter 363
- 384            **16-16-1609**, as enacted by Laws of Utah 2008, Chapter 363
- 385            **16-16-1701**, as enacted by Laws of Utah 2008, Chapter 363
- 386            **16-17-202**, as enacted by Laws of Utah 2008, Chapter 364
- 387            **16-17-203**, as enacted by Laws of Utah 2008, Chapter 364
- 388            **16-17-204**, as enacted by Laws of Utah 2008, Chapter 364
- 389            **16-17-210**, as enacted by Laws of Utah 2008, Chapter 364
- 390            **16-17-301**, as enacted by Laws of Utah 2008, Chapter 364
- 391            **16-17-402**, as enacted by Laws of Utah 2008, Chapter 364



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

394 Section 1. Section **3-1-1** is amended to read:

395 **3-1-1. Declaration of policy.**

396 It is the declared policy of this state, as one means of improving the economic position  
397 of agriculture, to encourage the organization of producers of agricultural products into  
398 effective associations under the control of such producers, and to that end this act [~~shoudl~~  
399 shall be liberally construed.

400 Section 2. Section **3-1-9** is amended to read:

401 **3-1-9. Powers.**

402 (1) An association formed under this act, or an association which might be formed  
403 under this act and which existed at the time this act took effect, shall have power and capacity  
404 to act possessed by natural persons and may do each and everything necessary, suitable, or  
405 proper for the accomplishment of any one or more of the purposes, or the attainment of any  
406 one or more of the objects herein enumerated or conducive to or expedient for the interests or  
407 benefit of the association, and may exercise all powers, rights, and privileges necessary or  
408 incident thereto, including the exercise of any rights, powers, and privileges granted by the  
409 laws of this state to corporations generally, excepting such as are inconsistent with the express  
410 provisions of this act.

411 (2) Without limiting or enlarging the grant of authority contained in Subsection (1), it  
412 is hereby specifically provided that every such association shall have authority:

413 (a) to act as agent, broker, or attorney in fact for its members and other producers, and  
414 for any subsidiary or affiliated association, and otherwise to assist or join with associations  
415 engaged in any one or more of the activities authorized by its articles, and to hold title for its  
416 members and other producers, and for subsidiary and affiliated association to property handled  
417 or managed by the association on their behalf;

418 (b) to make contracts and to exercise by its board or duly authorized officers or agents,  
419 all such incidental powers as may be necessary, suitable or proper for the accomplishment of  
420 the purposes of the association and not inconsistent with law or its articles, and that may be  
421 conducive to or expedient for the interest or benefit of the association;

422 (c) to make loans or advances to members or producer-patrons or to the members of an  
423 association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire,  
424 endorse, discount, or sell any evidence of debt, obligation or security;

425 (d) to establish and accumulate reasonable reserves and surplus funds and to abolish  
426 the same; also to create, maintain, and terminate revolving funds or other similar funds which  
427 may be provided for in the bylaws of the association;

428 (e) to own and hold membership in or shares of the stock of other associations and  
429 corporations and the bonds or other obligations thereof, engaged in any related activity; or, in  
430 producing, warehousing or marketing any of the products handled by the association; or, in  
431 financing its activities; and while the owner thereof, to exercise all the rights of ownership,  
432 including the right to vote thereon;

433 (f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its  
434 purposes may require;

435 (g) to borrow money without limitation as to amount, and to give its notes, bonds, or  
436 other obligations therefor and secure the payment thereof by mortgage or pledge;

437 (h) to deal in products of, and handle machinery, equipment, supplies and perform  
438 services for nonmembers to an amount not greater in annual value than such as are dealt in,  
439 handled or performed for or on behalf of its members, but the value of the annual purchases  
440 made for persons who are neither members nor producers ~~[shall not]~~ may not exceed 15 per  
441 centum of the value of all its purchases. Business transacted by an association for or on behalf  
442 of the United States or any agency or instrumentality thereof, shall be disregarded in  
443 determining the volume or value of member and nonmember business transacted by such  
444 association;

445 (i) if engaged in marketing the products of its members, to hedge its operations;

446 (j) to have a corporate seal and to alter the same at pleasure;

447 (k) to continue as a corporation for the time limited in its articles, and if no time limit  
448 is specified then perpetually;

449 (l) to sue and be sued in its corporate name;

450 (m) to conduct business in this state and elsewhere as may be permitted by law; and  
451 (n) to dissolve and wind up.

452 Section 3. Section **3-1-11** is amended to read:

453 **3-1-11. Certificates of and termination of membership -- Dividends and**  
454 **distribution of reserves -- Preferred stock -- Certificates of interest -- Unclaimed credits.**

455 (1) No certificate for membership or stock shall be issued until fully paid for, but  
456 bylaws may provide that a member may vote and hold office prior to payment in full for his  
457 membership or stock.

458 (2) Dividends in excess of eight per centum per annum on the actual cash value of the  
459 consideration received by the association [~~shall not~~] may not be paid on common stock or  
460 membership capital, but dividends may be cumulative if so provided in the articles or bylaws.

461 (3) (a) Savings in excess of dividends and additions to reserves and surplus shall be  
462 distributed on the basis of patronage.

463 (b) The bylaws may provide that any distribution to a nonmember, who is eligible for  
464 membership, may be credited to that nonmember until the amount of the distribution equals  
465 the value of a membership certificate, or a share of the association's common stock.

466 (c) The distribution credited to the account of the nonmember may be transferred to  
467 the membership fund at the option of the board, if, after two years, the amount is less than the  
468 value of the membership certificate or a share of common stock.

469 (4) (a) The bylaws shall provide the time and manner of settlement of membership  
470 interests with members who withdraw from the association or whose membership is otherwise  
471 terminated.

472 (b) Provisions for forfeiture of membership interests may be made in the bylaws.

473 (c) After the termination of the membership, for whatever cause, the withdrawing  
474 member shall exercise no further control over the facilities, assets, or activities of the  
475 association. The withdrawing member may not claim or receive any assets of the association  
476 except as follows:

477 (i) undistributed patronage allocated to the withdrawing member may be paid to the

478 withdrawing member pursuant to the association's bylaws;

479 (ii) the withdrawing member may be reimbursed for the par value of membership or  
480 stock in the association pursuant to the association's articles, bylaws, and membership  
481 agreement; and

482 (iii) the withdrawing member shall receive any distributions to which the member is  
483 entitled pursuant to Subsection 3-1-20(3)(d).

484 (5) (a) An association may issue preferred stock to members and nonmembers.

485 (b) Preferred stock may be redeemed or retired by the association on the terms and  
486 conditions as are provided in the articles or bylaws and printed on the stock certificates.

487 (c) Preferred stockholders [~~shall not be entitled to~~] may not vote, but no change in  
488 their priority or preference rights shall be effective until the written consent of the holders of a  
489 majority of the preferred stock has been obtained.

490 (d) Payment for preferred stock may be made in cash, services, or property on the  
491 basis of the fair value of the stock, services, and property, as determined by the board.

492 (6) (a) The association may issue to each member a certificate of interest evidencing  
493 the member's interest in any fund, capital investment, or other assets of the association.

494 (b) Those certificates may be transferred only to the association, or to other  
495 purchasers, as approved by the board of directors, under the terms and conditions provided for  
496 in the bylaws.

497 (7) (a) As used in this Subsection (7), "reasonable effort" means:

498 (i) a letter to a member's or former member's last-known address, a listing of  
499 unclaimed credits in an association publication, and the posting of a list of unclaimed credits  
500 at the association's principal place of business; and

501 (ii) publishing a list of the unclaimed credits exceeding \$25 each, or greater, in a  
502 newspaper of general circulation in the area where the association's principal offices are  
503 located.

504 (b) The association may retain revolving certificates of interest described in this  
505 Subsection (7) as an exception to the provisions of Title 67, Chapter 4a, Unclaimed Property

506 Act, if:

507 (i) the board of directors of the association determines to revoke the certificates and  
508 the certificates remain unclaimed by the association's members or former members for five  
509 years after the credit is declared;

510 (ii) the association is authorized to retain those credits by its bylaws;

511 (iii) the board of directors of the association approves the retention; and

512 (iv) before retaining the credits, the association makes a reasonable effort to locate and  
513 communicate the issuance of the credits to the members or former members.

514 (c) (i) The board of directors may either add the unclaimed credits as a contribution to  
515 the capital fund, or use them to establish an agricultural educational program as described in  
516 Subsection (7)(c)(ii).

517 (ii) If the board of directors chooses to use the unclaimed credits to establish an  
518 agricultural educational program, it shall establish an agricultural educational program to:

519 (A) provide scholarships for low income and worthy students to colleges and  
520 universities;

521 (B) provide funding for director training and education;

522 (C) provide funds for cooperative education programs in secondary or higher  
523 education institutions; or

524 (D) provide other educational opportunities.

525 (iii) The board of directors may not distribute unclaimed credits to current patrons of  
526 the association.

527 (iv) Upon dissolution of an association, the board of directors shall report and remit  
528 unclaimed credits to the Division of Unclaimed Property.

529 (d) (i) Each association that applies credits under Subsection (7)(c) during a calendar  
530 year shall file an annual report with the State Treasurer by April 15 of the following year.

531 (ii) The report shall specify:

532 (A) the dollar amount of credits applied during the year;

533 (B) the dollar amount of credit paid to claimants during the year; and

534 (C) the aggregate dollar amount of credits applied since January 1, 1996.

535 (e) At any time after the association retains credits under this Subsection (7), the  
536 association shall pay the members, former members, or their successors in interest, the value  
537 of the credit, without interest, if the members, former members, or their successors in interest:

538 (i) file a written claim for payment with the association; and

539 (ii) surrender the certificate issued by the association that evidences the credit.

540 Section 4. Section **3-1-13.8** is amended to read:

541 **3-1-13.8. Director committees.**

542 (1) (a) Unless otherwise provided by the articles of incorporation or bylaws, a board of  
543 directors may create one or more committees and appoint members of the board of directors to  
544 serve on them.

545 (b) Each committee [~~must~~] shall have two or more members who serve at the  
546 discretion of the board of directors.

547 (2) The creation of a committee and appointment of members to it [~~must~~] shall be  
548 approved by the greater of:

549 (a) a majority of all the directors in office when the action is taken; or

550 (b) the number of directors required by the articles of incorporation or bylaws to take  
551 action under Section 3-1-13.6.

552 (3) Sections 3-1-13.2 and 3-1-13.6 shall apply to committees and their members.

553 (4) The board of directors, the articles of incorporation, or the bylaws may provide the  
554 scope of the authority that each committee may exercise.

555 (5) The creation of, delegation of authority to, or action by a committee does not alone  
556 constitute compliance by a director with the standards of conduct described in Section  
557 3-1-13.3.

558 Section 5. Section **3-1-14** is amended to read:

559 **3-1-14. Removal of director.**

560 Any member may ask for the removal of a director by filing charges with the secretary  
561 or president of the association, together with a petition signed by 10 per centum of the

562 members requesting the removal of the director in question. The removal shall be voted upon  
563 at the next meeting of the members, and the association may remove the director by a majority  
564 vote of the members voting thereon. The director whose removal is requested shall be served  
565 with a copy of the charges not less than 10 days prior to the meeting and shall have an  
566 opportunity at the meeting to be heard in person and by counsel and to present evidence; and  
567 the persons requesting the removal shall have the same opportunity. In case the bylaws provide  
568 for election of directors by districts, then the petition for removal of a director [~~must~~] shall be  
569 signed by 20 per centum of the members residing in the district from which he was elected.  
570 The board [~~must~~] shall call a special meeting of the members residing in that district to  
571 consider the removal of the director; and by a majority vote of the members of that district  
572 voting thereon the director in question shall be removed from office.

573 Section 6. Section **3-1-15** is amended to read:

574 **3-1-15. Officers.**

575 The board shall elect a president, a secretary and a treasurer, and may elect one or more  
576 vice-presidents, and such other officers as may be authorized in the bylaws. Unless the articles  
577 otherwise specifically provide, the president and at least one of the vice-presidents [~~must~~] shall  
578 be directors, but a vice-president who is not a director cannot succeed to or fill the office of  
579 president. Any two of the offices of vice-president, secretary and treasurer may be combined in  
580 one person.

581 Section 7. Section **3-1-15.1** is amended to read:

582 **3-1-15.1. Duties of officers.**

583 Each officer has the authority and [~~should~~] shall perform the duties set forth in the  
584 bylaws, or, to the extent consistent with the bylaws, the duties prescribed by the directors or by  
585 the officer authorized by the board of directors to prescribe the duties of other officers.

586 Section 8. Section **3-1-17** is amended to read:

587 **3-1-17. Contracts with association.**

588 (1) (a) The bylaws may require members to execute contracts with the association in  
589 which the members agree to patronize the facilities created by the association, and to sell all or

590 a specified part of their products to or through it, or to buy all or a specified part of their  
591 supplies from or through the association or any facilities created by it.

592 (b) If the members contract to sell through the association, the fact that for certain  
593 purposes the relation between the association and its members may be one of agency [~~shall~~  
594 ~~not~~] does not prevent the passage from the member to the association of absolute and  
595 exclusive title to the products which are the subject matter of the contract.

596 (c) Such title shall pass to the association upon delivery of the product, or at any other  
597 time specified in the contract.

598 (d) If the period of the contract exceeds three years, the bylaws and the contracts  
599 executed thereunder shall specify a reasonable period, not less than 10 days in each year, after  
600 the third year, during which the member, by giving to the association such reasonable notice  
601 as the association may prescribe, may withdraw from the association; provided, that if the  
602 bylaws or contracts executed hereunder so specify, a member may not withdraw from the  
603 association while indebted thereto.

604 (e) In the absence of such a withdrawal provision, a member may withdraw at any  
605 time after three years.

606 (2) The contract may fix, as liquidated damages, which [~~shall not~~] may not be  
607 regarded as penalties, specific sums to be paid by the members to the association upon the  
608 breach of any provision of the contract regarding the use of any facilities of the association or  
609 the sale, delivery, handling, or withholding of products; and may further provide that the  
610 member who breaks his contract shall pay all costs, including premiums for bonds, and  
611 reasonable attorney's fees, to be fixed by the court, in case the association prevails in any  
612 action upon the contract.

613 (3) (a) A court of competent jurisdiction may grant an injunction to prevent the breach  
614 or further breach of the contract by a member and may decree specific performance thereof.

615 (b) Pending the adjudication of such an action and upon filing a verified complaint  
616 showing the breach or threatened breach, and a bond in such form and amount as may be  
617 approved by the court, the court may grant a temporary restraining order or preliminary

618 injunction against the member.

619 (4) No remedy, either legal or equitable, herein provided for, shall be exclusive, but  
620 the association may avail itself of any and all such remedies, at the same or different times, in  
621 any action or proceeding.

622 (5) In any action upon such marketing contracts, it shall be conclusively presumed that  
623 a landowner or landlord or lessor is able to control the delivery of products produced on his  
624 land by tenants or others, whose tenancy or possession or work on such land or the terms of  
625 whose tenancy or possession or labor thereon were created or changed after execution by the  
626 landowner or landlord or lessor of such a marketing contract; and in such actions, the  
627 foregoing remedies for nondelivery or breach shall lie and be enforceable against such  
628 landowner, landlord, or lessor.

629 (6) (a) The association may file contracts to sell agricultural products to or through the  
630 association in the office of the county recorder of the county in which the products are  
631 produced.

632 (b) If the association has uniform contracts with more than one member in any county,  
633 it may, in lieu of filing the original contracts, file the affidavit of its president, vice president  
634 or secretary, containing or having attached thereto:

635 (i) a true copy of the uniform contract entered into with its members producing such  
636 product in that county; and

637 (ii) the names of the members who have executed such contract and a description of  
638 the land on which the product is produced, if such description is contained in the contract.

639 (c) The association may file from time to time thereafter affidavits containing revised  
640 or supplementary lists of the members producing such product in that county without setting  
641 forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof.

642 (d) All affidavits filed under this section shall state in substance that they are filed  
643 pursuant to the provisions of this section.

644 (e) The county recorder shall file such affidavits and make endorsements thereon and  
645 record and make entries thereof in the same manner as is required by law in the case of chattel

646 mortgages, and he shall compile and make available for public inspection a convenient index  
647 containing the names of all signers of such contracts, and collect for his services hereunder the  
648 same fees as for chattel mortgages.

649 (f) The filing of any such contract, or such affidavit, shall constitute constructive  
650 notice of the contents thereof, and of the association's title or right to the product embraced in  
651 such contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons  
652 dealing with the members with reference to such product.

653 (g) No title, right, or lien of any kind shall be acquired to or on the product thereafter  
654 except through the association or with its consent, or subject to its rights; and the association  
655 may recover the possession of such property from any and all subsequent purchasers,  
656 encumbrancers, and creditors, and those claiming under them, in whose possession the same  
657 may be found, by any appropriate action for the recovery of personal property, and it may have  
658 relief by injunction and for damages.

659 Section 9. Section **3-1-22** is amended to read:

660 **3-1-22. Accrued rights not affected by chapter.**

661 This act [~~shall not~~] does not impair nor affect any act, offense committed, or right  
662 accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to  
663 the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or  
664 inflicted as fully and to the same extent as if this act had not been passed.

665 Section 10. Section **3-1-26** is amended to read:

666 **3-1-26. Separability clause.**

667 If any provision of this act or the application thereof to any person or circumstances is  
668 held invalid, such invalidity [~~shall not~~] does not affect other provisions or applications of the  
669 act which can be given effect without the invalid provision or application, and to this end the  
670 provisions of this act are declared to be severable.

671 Section 11. Section **3-1-35** is amended to read:

672 **3-1-35. Procedure at meeting to vote on plan of merger or consolidation --**  
673 **Abandonment of merger or consolidation prior to filing articles.**

674 (1) At each meeting, a vote of the current members of each cooperative party to the  
675 merger or consolidation having members and a vote of the shareholders of each party to the  
676 merger or consolidation having stock or shares shall be taken on the proposed plan of merger  
677 or consolidation.

678 (2) (a) If the articles of incorporation or bylaws of any party to the merger or  
679 consolidation provide for the election by members or shareholders at district meetings of  
680 delegates to vote at annual or special meetings of the association or noncooperative  
681 corporation, these procedures shall be followed, and the vote of the delegates at the meeting  
682 where the plan of merger or consolidation is voted on shall be counted in the same way and  
683 entitled to the same weight as a vote of the delegates at any other meeting of the association or  
684 noncooperative corporation.

685 (b) Members of cooperative parties may vote in person or by signed ballot, if voting  
686 by ballot is allowed in the association's bylaws.

687 (c) Shareholders or their delegates of noncooperative parties may vote in person or by  
688 written proxy.

689 (3) The plan of merger or consolidation [~~must~~] shall be approved by a 2/3 majority of:

- 690 (a) the voting members of cooperative parties; and
- 691 (b) holders or delegates of holders of the outstanding shares of noncooperative parties.

692 (4) After approval by a vote of the members and shareholders of each party to the  
693 merger or consolidation and prior to the filing of the articles of merger or consolidation, the  
694 merger or consolidation may be abandoned pursuant to provisions set forth in the plan of  
695 merger or consolidation.

696 Section 12. Section **3-1-37** is amended to read:

697 **3-1-37. Effect of merger or consolidation.**

698 (1) After the certificate of merger or consolidation is issued by the Division of  
699 Corporations and Commercial Code, the merger or consolidation shall be effected.

700 (2) When the merger or consolidation has been effected:

701 (a) The associations or corporations which are parties to the plan of merger or

702 consolidation shall be a single corporation designated in the plan of merger or consolidation as  
703 the surviving or new corporation.

704 (b) The separate existence of all associations and corporations which are parties to the  
705 merger or consolidation, except the surviving or new corporation, shall cease.

706 (c) The surviving or new corporation shall have all of the rights, privileges,  
707 immunities, and powers and be subject to all the duties and liabilities of a corporation  
708 organized under this chapter or under the Utah Nonprofit Corporation and Cooperative  
709 Association Act, whichever act or chapter is specified in the plan of merger or consolidation.

710 (d) (i) The surviving or new corporation shall possess all rights, privileges,  
711 immunities, and franchises of each of the merging associations and corporations.

712 (ii) All property, debts due, including subscriptions to shares, all other choses in  
713 action, and all interests of each of the associations and corporations merged or consolidated,  
714 shall be taken, transferred to, and vested in the single corporation immediately.

715 (iii) The title to or interest in any real estate vested in any of the associations or  
716 corporations [~~shall not~~] may not revert or be in any way impaired by the merger or  
717 consolidation.

718 (e) (i) The surviving or new corporation shall be responsible and liable for all the  
719 liabilities and obligations of each of the associations and corporations which merged or  
720 consolidated.

721 (ii) Any claim existing or action or proceeding pending by or against any of the  
722 associations and corporations may be prosecuted as if the merger or consolidation had not  
723 taken place, or the surviving or new corporation may be substituted in its place.

724 (iii) The rights of creditors or any liens upon the property of any association or  
725 corporation [~~shall not~~] may not be impaired by the merger or consolidation.

726 (f) The articles of incorporation of the surviving or new corporation may be amended,  
727 if changes in the articles of incorporation are stated in the plan of merger or consolidation.

728 Section 13. Section **4-1-7** is amended to read:

729 **4-1-7. Severability clause.**

730           If any provision of this code or the application of any such provision to any person or  
731 circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or  
732 applications of this code which can be given effect without the invalid provision or  
733 application, and to this end the provisions of this code are declared to be severable.

734           Section 14. Section **4-2-8.7** is amended to read:

735           **4-2-8.7. Invasive Species Mitigation Fund created.**

736           (1) As used in this section, "project" means an undertaking that prevents catastrophic  
737 wildland fire through land restoration in a watershed that:

- 738           (a) is impacted by cheatgrass or other invasive species; or
- 739           (b) has a fuel load that may contribute to a catastrophic wildland fire.

740           (2) (a) There is created a general fund restricted account known as the "Invasive  
741 Species Mitigation Fund."

742           (b) The fund shall consist of:

- 743           (i) money appropriated by the Legislature;
- 744           (ii) grants from the federal government; and
- 745           (iii) grants or donations from a person.

746           (3) Any unallocated balance in the fund at the end of the year is nonlapsing.

747           (4) (a) After consulting with the Department of Natural Resources and the  
748 Conservation Commission, the department may expend fund monies:

749           (i) on a project implemented by:

- 750           (A) the department; or
- 751           (B) the Conservation Commission; or

752           (ii) by giving a grant for a project to:

- 753           (A) a state agency;
- 754           (B) a federal agency; or
- 755           (C) a federal, state, tribal, or private landowner.

756           (b) A grant to a federal landowner [~~must~~] shall be matched with at least an equal  
757 amount of money by the federal landowner.

758 (c) In expending the fund monies authorized by Subsection (4)(a)(i), the department  
759 shall use existing infrastructure and employees to plan and implement the project.

760 (5) In giving a grant, the department shall consider the effectiveness of a project in  
761 preventing:

762 (a) first, the risk to public safety and health from:

763 (i) air pollution;

764 (ii) flooding; and

765 (iii) reduced visibility on a highway;

766 (b) second, damage to the environment, including:

767 (i) soil erosion;

768 (ii) degraded water quality; and

769 (iii) release of carbon; and

770 (c) third, damage to:

771 (i) a local economy; and

772 (ii) habitat for wildlife or livestock.

773 Section 15. Section **4-2-15** is amended to read:

774 **4-2-15. Civil and criminal penalties -- Costs -- Civil liability.**

775 (1) Except as otherwise provided by this title, any person, or the officers or employees  
776 of any person, who violates this title or any lawful notice or order issued pursuant to this title  
777 shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding, and in a  
778 criminal proceeding is guilty of a class B misdemeanor. A subsequent criminal violation  
779 within two years is a class A misdemeanor.

780 (2) Any person, or the officers or employees of any person, shall be liable for any  
781 expenses incurred by the department in abating any violation of this title.

782 (3) A penalty assessment or criminal conviction under this title [~~shall not~~] does not  
783 relieve the person assessed or convicted from civil liability for claims arising out of any act  
784 which was also a violation.

785 Section 16. Section **4-5-5** is amended to read:

786           **4-5-5. Adulterated or misbranded articles -- Tagging -- Detention or embargo --**  
787 **Court proceedings for condemnation -- Perishable food.**

788           (1) (a) When an authorized agent of the department finds or has probable cause to  
789 believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent within  
790 the meaning of this chapter, he shall affix to the food a tag or other appropriate marking,  
791 giving notice that:

792           (i) the food is, or is suspected of being, adulterated or misbranded;

793           (ii) the food has been detained or embargoed; and

794           (iii) removal of the food is prohibited as provided in Subsection (1)(b).

795           (b) No person may remove or dispose of detained or embargoed food by sale or  
796 otherwise until permission for removal or disposal is given by an agent of the department or  
797 the court.

798           (2) When food detained or embargoed under Subsection (1) has been found by an  
799 agent to be adulterated or misbranded, the department shall petition the district court in whose  
800 jurisdiction the food is detained or embargoed for an order of condemnation of the food.

801           When the agent has found that food so detained or embargoed is not adulterated or  
802 misbranded, the department shall remove the tag or other marking.

803           (3) (a) If the court finds that detained or embargoed food is adulterated or misbranded,  
804 the food [~~must~~] shall, after entry of the decree, be destroyed under the supervision of the agent.

805           (b) If the adulteration or misbranding can be corrected by proper labeling or  
806 processing of the food, the court may by order direct that the food be delivered to the claimant  
807 for labeling or processing after:

808           (i) entry of the decree;

809           (ii) all costs, fees, and expenses have been paid; and

810           (iii) a sufficient bond, conditioned that the food [~~must~~] shall be properly labeled and  
811 processed, has been executed.

812           (c) An agent of the department shall supervise, at the claimant's expense, the labeling  
813 or processing of the food.

814 (d) The bond shall be returned to the claimant of the food upon:

815 (i) representation to the court by the department that the food is no longer in violation  
816 of this chapter; and

817 (ii) the expenses of supervision have been paid.

818 (4) If an authorized agent of the department finds in any building or vehicle any  
819 perishable food which is unsound, contains any filthy, decomposed, or putrid substance, or  
820 may be poisonous, deleterious to health, or otherwise unsafe, the commissioner or his  
821 authorized agent shall condemn or destroy the food or render it unsalable as human food.

822 Section 17. Section **4-5-7** is amended to read:

823 **4-5-7. Adulterated food specified.**

824 A food is adulterated:

825 (1) (a) if it bears or contains any poisonous or deleterious substance that may render it  
826 injurious to health; but in case the substance is not an added substance the food [~~shall not~~  
827 may not be considered adulterated under this Subsection (1)(a) if the quantity of the substance  
828 in such food does not ordinarily render it injurious to health;

829 (b) (i) if it bears or contains any added poisonous or added deleterious substance other  
830 than one that is:

831 (A) a pesticide chemical in or on a raw agricultural commodity;

832 (B) a food additive; or

833 (C) a color additive that is unsafe within the meaning of Subsection 4-5-11(1); or

834 (ii) if it is a raw agricultural commodity and it bears or contains a pesticide chemical  
835 that is unsafe within the meaning of 21 U.S.C. Sec. 346a; or

836 (iii) if it is or it bears or contains any food additive that is unsafe within the meaning  
837 of 21 U.S.C. Sec. 348; provided that where a pesticide chemical has been used in or on a raw  
838 agricultural commodity in conformity with an exemption granted or tolerance prescribed under  
839 21 U.S.C. 346a and the raw agricultural commodity has been subjected to processing such as  
840 canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical  
841 remaining in or on such processed food shall, notwithstanding the provisions of Section

842 4-5-11 and this Subsection (1)(b)(iii), not be considered unsafe if such residue in or on the raw  
843 agricultural commodity has been removed to the extent possible in good manufacturing  
844 practice, and the concentration of such residue in the processed food when ready to eat is not  
845 greater than the tolerance prescribed for the raw agricultural commodity;

846 (c) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or  
847 decomposed substance, or if it is otherwise unfit for food;

848 (d) if it has been produced, prepared, packed, or held under unsanitary conditions  
849 whereby it may have become contaminated with filth, or whereby it may have been rendered  
850 diseased, unwholesome, or injurious to health;

851 (e) if it is, in whole or in part, the product of a diseased animal or an animal that has  
852 died otherwise than by slaughter, or of an animal that has been fed upon the uncooked offal  
853 from a slaughterhouse;

854 (f) if its container is composed, in whole or in part, of any poisonous or deleterious  
855 substance that may render the contents injurious to health;

856 (g) if it has been intentionally subjected to radiation, unless the use of the radiation  
857 was in conformity with a rule or exemption in effect pursuant to Section 4-5-11, or 21 U.S.C.  
858 Sec. 348; or

859 (h) in meat or meat products are adulterated:

860 (i) if such products are in casings, packages, or wrappers through which any part of  
861 their contents can be seen and which, or the markings of which, are colored red or any other  
862 color so as to be misleading or deceptive with respect to the color, quality, or kind of such  
863 products to which they are applied; or

864 (ii) if such products contain or bear any color additive;

865 (2) (a) if any valuable constituent has been in whole or in part omitted or abstracted  
866 therefrom;

867 (b) if any substance has been substituted wholly or in part therefor;

868 (c) if damage or inferiority has been concealed in any manner; or

869 (d) if any substance has been added or mixed or packed therewith so as to increase its

870 bulk or weight, or reduce its quality or strength or make it appear better or of greater value  
871 than it is; or

872 (3) if it is confectionery, and:

873 (a) has partially or completely imbedded therein any nonnutritive object; provided that  
874 this Subsection (3)(a) [~~shall not~~] does not apply in the case of any nonnutritive objective if, in  
875 the judgment of the department such object is of practical functional value to the  
876 confectionery product and would not render the product injurious or hazardous to health;

877 (b) bears or contains any alcohol other than alcohol not in excess of .05% by volume  
878 derived solely from the use of flavoring extracts; or

879 (c) bears or contains any nonnutritive substance; provided, that this Subsection (3)(c)  
880 [~~shall not~~] does not apply to a safe nonnutritive substance that is in or on confectionery by  
881 reason of its use for some practical functional purpose in the manufacture, packaging, or  
882 storing of such confectionery if the use of the substance does not promote deception of the  
883 consumer or otherwise result in adulteration or misbranding in violation of this chapter.

884 (4) The department may, for the purpose of avoiding or resolving uncertainty as to the  
885 application of Subsection (3)(c), issue rules allowing or prohibiting the use of particular  
886 nonnutritive substances.

887 Section 18. Section **4-5-8** is amended to read:

888 **4-5-8. Misbranded food specified.**

889 (1) Food is misbranded if:

890 (a) its label is false or misleading in any way;

891 (b) its labeling or packaging fails to conform with the requirements of Section 4-5-15;

892 (c) it is offered for sale under the name of another food;

893 (d) its container is so made, formed, or filled with packing material or air as to be  
894 misleading; or

895 (e) it fails to conform with any requirement specified in this section.

896 (2) A food that is an imitation of another food [~~must~~] shall bear a label, in type of  
897 uniform size and prominence, stating the word "imitation," and, immediately thereafter, the

898 name of the food imitated.

899 (3) (a) A food in package form [must] shall bear a label containing:

900 (i) the name and place of business of the manufacturer, packer, or distributor; and

901 (ii) an accurate statement of the quantity of the contents in terms of weight, measure,  
902 or numerical count.

903 (b) The statement required by Subsection (3)(a)(ii) [must] shall be separately and  
904 accurately stated in a uniform location upon the principal display panel of the label unless  
905 reasonable variations and exemptions for small packages are established by a rule made by the  
906 department.

907 (c) A manufacturer or distributor of carbonated beverages who utilizes proprietary  
908 stock or a proprietary crown is exempt from Subsection (3)(a)(i) if he files with the  
909 department:

910 (i) a sworn affidavit giving a full and complete description of each area within the  
911 state in which beverages of his manufacturing or distributing are to be distributed; and

912 (ii) the name and address of the person responsible for compliance with this chapter  
913 within each of those areas.

914 (4) Any word, statement, or other information required by this chapter to appear on the  
915 label or labeling [must] shall be:

916 (a) prominently placed on the label;

917 (b) conspicuous in comparison with other words, statements, designs, or devices in the  
918 labeling; and

919 (c) in terms which render it likely to be read and understood by the ordinary individual  
920 under customary conditions of purchase and use.

921 (5) If a food is represented as a food for which a definition and standard of identity has  
922 been prescribed by federal regulations or department rules as provided by Section 4-5-6, it  
923 [must] shall:

924 (a) conform to the definition and standard; and

925 (b) have a label bearing:

926 (i) the name of the food specified in the definition and standard; and

927 (ii) insofar as may be required by the rules, the common names of optional  
928 ingredients, other than spices, flavorings, and colorings, present in the food.

929 (6) If a food is represented as a food for which a standard of quality has been  
930 prescribed by federal regulations or department rules as provided by Section 4-5-6, and its  
931 quality falls below the standard, its label [~~must~~] shall bear, in the manner and form as the  
932 regulations or rules specify, a statement indicating that it falls below the standards.

933 (7) If a food is represented as a food for which a standard of fill of container has been  
934 prescribed by federal regulations or department rules as provided by Section 4-5-6, and it falls  
935 below the applicable standard of fill, its label [~~must~~] shall bear, in the manner and form as the  
936 regulations or rules specify, a statement indicating that it falls below the standard.

937 (8) (a) Any food for which neither a definition nor standard of identity has been  
938 prescribed by federal regulations or department rules as provided by Section 4-5-6 [~~must~~] shall  
939 bear labeling clearly giving:

940 (i) the common or usual name of the food, if any; and

941 (ii) in case it is fabricated from two or more ingredients, the common or usual name of  
942 each ingredient, except that spices, flavorings, and colorings, other than those sold as such,  
943 may be designated as spices, flavorings, and colorings without naming each.

944 (b) To the extent that compliance with the requirements of Subsection (8)(a)(ii) is  
945 impractical or results in deception or unfair competition, exemptions shall be established by  
946 rules made by the department.

947 (9) If a food is represented as a food for special dietary uses, its label [~~must~~] shall bear  
948 the information concerning its vitamin, mineral, and other dietary properties as the department  
949 by rule prescribes.

950 (10) If a food bears or contains any artificial flavoring, artificial coloring, or chemical  
951 preservatives, its label [~~must~~] shall state that fact. If compliance with the requirements of this  
952 subsection is impracticable, exemptions shall be established by rules made by the department.

953 (11) The shipping container of any raw agricultural commodity bearing or containing

954 a pesticide chemical applied after harvest [~~must~~] shall bear labeling which declares the  
955 presence of the chemical in or on the commodity and the common or usual name and function  
956 of the chemical. The declaration is not required while the commodity, having been removed  
957 from the shipping container, is being held or displaced for sale at retail out of the container in  
958 accordance with the custom of the trade.

959 (12) A product intended as an ingredient of another food, when used according to the  
960 directions of the purveyor, may not result in the final food product being adulterated or  
961 misbranded.

962 (13) The packaging and labeling of a color additive [~~must~~] shall be in conformity with  
963 the packaging and labeling requirements applicable to the color additive prescribed under the  
964 federal act.

965 (14) Subsections (5), (8), and (10) with respect to artificial coloring do not apply to  
966 butter, cheese, or ice cream. Subsection (10) with respect to chemical preservatives does not  
967 apply to a pesticide chemical when used in or on a raw agricultural commodity.

968 Section 19. Section **4-5-9** is amended to read:

969 **4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement**  
970 **of registration -- Inspection for compliance.**

971 (1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
972 department shall establish rules providing for the registration of food establishments to protect  
973 public health and ensure a safe food supply.

974 (b) The owner or operator of a food establishment shall register with the department  
975 before operating a food establishment.

976 (c) Prior to granting a registration to the owner or operator of a food establishment, the  
977 department shall inspect and assess the food establishment to determine whether it complies  
978 with the rules established under Subsection (1)(a).

979 (d) An applicant shall register with the department, in writing, using forms required by  
980 the department.

981 (e) The department shall issue a registration to an applicant, if the department

982 determines that the applicant meets the qualifications of registration established under  
983 Subsection (1)(a).

984 (f) If the applicant does not meet the qualifications of registration, the department  
985 shall notify the applicant, in writing, that the applicant's registration is denied.

986 (g) (i) If an applicant submits an incomplete application, a written notice of  
987 conditional denial of registration shall be provided to an applicant.

988 (ii) The applicant [~~must~~] shall correct the deficiencies within the time period specified  
989 in the notice to receive a registration.

990 (h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food  
991 establishment a registration fee.

992 (ii) The department shall retain the fees as dedicated credits and shall use the fees to  
993 administer the registration of food establishments.

994 (2) (a) A registration, issued under this section, shall be valid from the date the  
995 department issues the registration, to December 31 of the year the registration is issued.

996 (b) A registration may be renewed for the following year by applying for renewal by  
997 December 31 of the year the registration expires.

998 (3) A registration, issued under this section, shall specify:

999 (a) the name and address of the food establishment;

1000 (b) the name of the owner or operator of the food establishment; and

1001 (c) the registration issuance and expiration date.

1002 (4) (a) The department may immediately suspend a registration, issued under this  
1003 section, if any of the conditions of registration have been violated.

1004 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for  
1005 the reinstatement of a registration.

1006 (ii) If the department determines that all registration requirements have been met, the  
1007 department shall reinstate the registration.

1008 (5) (a) A food establishment, registered under this section, shall allow the department  
1009 to have access to the food establishment to determine if the food establishment is complying

1010 with the registration requirements.

1011 (b) If a food establishment denies access for an inspection required under Subsection  
1012 (5)(a), the department may suspend the food establishment's registration until the department  
1013 is allowed access to the food establishment's premises.

1014 Section 20. Section **4-5-15** is amended to read:

1015 **4-5-15. Consumer commodities -- Labeling and packaging.**

1016 (1) All labels of consumer commodities, as defined by this chapter, shall conform with  
1017 the requirements for the declaration of net quantity of contents of 15 U.S.C. Sec. 1453 and the  
1018 regulations promulgated pursuant thereto: provided, that consumer commodities exempted  
1019 from 15 U.S.C. Sec. 1453(4) shall also be exempt from this Subsection (1).

1020 (2) The label of any package of a consumer commodity that bears a representation as  
1021 to the number of servings of the commodity contained in the package shall bear a statement of  
1022 the net quantity in terms of weight, measure, or numerical count for each serving.

1023 (3) (a) No person shall distribute or cause to be distributed in commerce any packaged  
1024 consumer commodity if any qualifying words or phrases appear in conjunction with the  
1025 separate statement of the net quantity of contents required by Subsection (1), but nothing in  
1026 this section shall prohibit supplemental statements, at other places on the package, describing  
1027 in nondeceptive terms the net quantity of contents.

1028 (b) Supplemental statements of net quantity of contents may not include any term  
1029 qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the  
1030 commodity contained in the package.

1031 (4) (a) Whenever the department determines that rules other than those prescribed by  
1032 Subsection(1) are necessary to prevent the deception of consumers or to facilitate value  
1033 comparisons as to any consumer commodity, the department shall promulgate rules effective  
1034 to:

1035 (i) establish and define standards for the characterization of the size of a package  
1036 enclosing any consumer commodity, which may be used to supplement the label statement of  
1037 net quantity of contents of packages containing the commodity, but this Subsection (4) ~~shall~~

1038 ~~not be construed as authorizing]~~ does not authorize any limitation on the size, shape, weight,  
1039 dimensions, or number of packages that may be used to enclose any commodity;

1040 (ii) regulate the placement upon any package containing any commodity, or upon any  
1041 label affixed to a commodity, of any printed matter stating or representing by implication that  
1042 the commodity is offered for retail sale at a price lower than the ordinary and customary retail  
1043 sale price or that a retail sale price advantage is accorded to purchasers by reason of the size of  
1044 that package or the quantity of its contents;

1045 (iii) require that the label on each package of a consumer commodity bear:

1046 (A) the common or usual name of such consumer commodity, if any; and

1047 (B) if the consumer commodity consists of two or more ingredients, the common or  
1048 usual name of each such ingredient listed in order of decreasing predominance, but nothing in  
1049 this Subsection (4) shall be considered to require that any trade secret be divulged; or

1050 (iv) prevent the nonfunctional slack-fill of packages containing consumer  
1051 commodities.

1052 (b) For the purposes of Subsection (4)(a)(iv), a package is nonfunctionally slack-filled  
1053 if it is filled to substantially less than its capacity for reasons other than:

1054 (i) protection of the contents of such package; or

1055 (ii) the requirements of machines used for enclosing the contents in such package;  
1056 provided, that the department may adopt any rules promulgated according to the Fair  
1057 Packaging and Labeling Act, 15 U.S.C. Sec. 1453.

1058 Section 21. Section **4-5-18** is amended to read:

1059 **4-5-18. Inspection of premises and records -- Authority to take samples --**

1060 **Inspection results reported.**

1061 (1) An authorized agent of the department upon presenting appropriate credentials to  
1062 the owner, operator, or agent in charge, may:

1063 (a) enter at reasonable times any factory, warehouse, or establishment in which food is  
1064 manufactured, processed, packed, or held for introduction into commerce or after introduction  
1065 into commerce;

- 1066 (b) enter any vehicle being used to transport or hold food in commerce;
- 1067 (c) inspect at reasonable times and within reasonable limits and in a reasonable  
1068 manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished  
1069 and unfinished materials, containers, and labeling located within it;
- 1070 (d) obtain samples necessary for the enforcement of this chapter so long as the  
1071 department pays the posted price for the sample if requested to do so and receives a signed  
1072 receipt from the person from whom the sample is taken;
- 1073 (e) have access to and copy all records of carriers in commerce showing:
- 1074 (i) the movement in commerce of any food;
- 1075 (ii) the holding of food during or after movement in commerce; and
- 1076 (iii) the quantity, shipper, and consignee of food.
- 1077 (2) Evidence obtained under this section may not be used in a criminal prosecution of  
1078 the person from whom the evidence was obtained.
- 1079 (3) Carriers may not be subject to the other provisions of this chapter by reason of  
1080 their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.
- 1081 (4) Upon completion of the inspection of a factory, warehouse, consulting laboratory,  
1082 or other establishment and prior to leaving the premises, the authorized agent making the  
1083 inspection shall give to the owner, operator, or agent in charge a report in writing setting forth  
1084 any conditions or practices observed by him which in his judgment indicate that any food in  
1085 the establishment:
- 1086 (a) consists in whole or in part of any filthy, putrid, or decomposed substance; or
- 1087 (b) has been prepared, packed, or held under unsanitary conditions whereby it may  
1088 have become contaminated with filth or whereby it may have been rendered injurious to  
1089 health.
- 1090 (5) A copy of the report [~~must~~] shall be sent promptly to the department.
- 1091 (6) If the authorized agent making the inspection of a factory, warehouse, or other  
1092 establishment has obtained any sample in the course of the inspection, the agent shall give to  
1093 the owner, operator, or agent in charge a receipt describing the samples obtained.

1094 (7) When in the course of the inspection the officer or employee making the inspection  
1095 obtains a sample of any food and an analysis is made of the sample for the purpose of  
1096 ascertaining whether the food consists in whole or in part of any filthy, putrid, or decomposed  
1097 substance or is otherwise unfit for food, a copy of the results of the analysis [~~must~~] shall be  
1098 furnished promptly to the owner, operator, or agent in charge.

1099 Section 22. Section ~~4-7-8~~ is amended to read:

1100 **4-7-8. Applicant for dealer's license to post security -- Increase in amount of**  
1101 **security posted -- Action on security authorized -- Duties of commissioner -- Option to**  
1102 **require posting new security if action filed -- Effect of failure to post new security --**  
1103 **Commissioner's authority to call bond if not renewed.**

1104 (1) (a) Before a license is issued to a dealer, the applicant [~~must~~] shall post a corporate  
1105 surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement  
1106 considered reasonable in an amount not less than \$10,000 nor more than \$200,000, as  
1107 determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7  
1108 U.S.C. Section 181 et seq.

1109 (b) Any bond shall be written by a surety licensed under the laws of Utah and name  
1110 the state, as obligee, for the use and benefit of producers.

1111 (c) The bond or other security posted shall be conditioned upon:

1112 (i) the faithful performance of contracts and the faithful accounting for and handling  
1113 of any product of agriculture consigned to the dealer;

1114 (ii) the performance of the obligations imposed under this chapter; and

1115 (iii) the payment of court costs and attorney's fees to the prevailing party incident to  
1116 any suit upon the bond or other security posted.

1117 (2) (a) The commissioner may require a dealer who is issued a license to increase the  
1118 amount of the bond or other security posted under Subsection (1)(a) if the commissioner  
1119 determines the bond or other security posted is inadequate to secure performance of the  
1120 dealer's obligations.

1121 (b) The commissioner shall notify the Packers and Stockyards Administration of an

1122 increase made under Subsection (2)(a).

1123 (c) The commissioner may suspend a dealer's license for failure to comply with  
1124 Subsection (2)(a) within 10 days after notice is given to the dealer.

1125 (3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by  
1126 a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action  
1127 upon the bond or other security posted for damages against both the principal and surety.

1128 (4) (a) If it is reported to the department by a consignor that a dealer has failed to pay  
1129 in a timely manner for any product of agriculture received for sale, the commissioner shall:

1130 (i) ascertain the name and address of each consignor who is a creditor of the dealer;  
1131 and

1132 (ii) request a verified written statement setting forth the amount claimed due from the  
1133 dealer.

1134 (b) Upon receipt of the verified statements, the commissioner shall bring an action  
1135 upon the bond or other security posted on behalf of the consignors who claim amounts due  
1136 from the dealer.

1137 (5) (a) If an action is filed upon the bond or other security posted, the commissioner  
1138 may require the filing of new security.

1139 (b) Immediately upon recovery in the action, the commissioner shall require the dealer  
1140 to file a new bond or other security.

1141 (c) Failure, in either case, to file the bond or other security within 10 days after  
1142 demand is cause for suspension of the license until a new bond or other security is filed.

1143 (d) If the bond or other security posted under this section is not renewed within 10  
1144 days of its expiration date, unless the commissioner states in writing that this is unnecessary,  
1145 the commissioner may obtain, after a hearing, the full amount of the bond or other security  
1146 before it expires.

1147 Section 23. Section **4-7-11** is amended to read:

1148 **4-7-11. Department authority -- Examination and investigation of transactions --**  
1149 **Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist**

1150 **order -- Enforcement -- Review.**

1151 (1) For the purpose of enforcing this chapter the department may, upon its own  
1152 motion, or shall, upon the verified complaint of an interested consignor, investigate, examine,  
1153 or inspect any transaction involving:

1154 (a) the solicitation, receipt, sale, or attempted sale of any product of agriculture by a  
1155 dealer or person assuming to act as a dealer;

1156 (b) the failure to make a correct account of sales;

1157 (c) the intentional making of a false statement about market conditions or the  
1158 condition or quantity of any product of agriculture consigned;

1159 (d) the failure to remit payment in a timely manner to the consignor as required by  
1160 contract or by this chapter;

1161 (e) any other consignment transaction alleged to have resulted in damage to the  
1162 consignor; or

1163 (f) any dealer or agent with an unsatisfied judgment by a civil court related to an  
1164 activity for which licensing is required by this chapter.

1165 (2) (a) After investigation upon its own motion, if the department determines that  
1166 probable cause exists to believe that a dealer has engaged or is engaging in acts that violate  
1167 this chapter, it shall issue a notice of agency action.

1168 (b) (i) Upon the receipt of a verified complaint, the department shall undertake to  
1169 effect a settlement between the consignor and the dealer.

1170 (ii) If a settlement cannot be effected, the department shall treat the verified complaint  
1171 as a request for agency action.

1172 (3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer  
1173 designated by the commissioner, determines by a preponderance of the evidence that the  
1174 person complained of has violated this chapter and that the violation has resulted in damage to  
1175 the complainant, the officer shall:

1176 (i) prepare written findings of fact detailing the findings and fixing the amount of  
1177 damage suffered; and

1178 (ii) order the defendant to pay damages.

1179 (b) In a hearing initiated upon the department's own motion, if the commissioner or  
1180 hearing officer determines by a preponderance of the evidence that the person complained of  
1181 by the department has engaged in, or is engaging in, acts that violate this chapter, the  
1182 commissioner or officer shall prepare written findings of fact and an order requiring the person  
1183 to cease and desist from the activity.

1184 (4) The department may petition any court having jurisdiction in the county where the  
1185 action complained of occurred to enforce its order.

1186 (5) Any dealer aggrieved by an order issued under this section may obtain judicial  
1187 review of the order.

1188 (6) (a) The department may not act upon a verified complaint submitted to the  
1189 department more than six months after the consignor allegedly suffered damage.

1190 (b) A livestock claim [~~must~~] shall be made in writing within 120 days from the date of  
1191 the transaction.

1192 Section 24. Section **4-9-15** is amended to read:

1193 **4-9-15. Registration of commercial establishments using weights and measures**  
1194 **-- Approved weights and measures inspectors -- Application -- Fee -- Expiration --**  
1195 **Renewal.**

1196 (1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1197 department shall establish rules providing for the registration of weights and measures users  
1198 and issuance of certification of weights and measures devices to ensure the use of correct  
1199 weights and measures in commerce or trade.

1200 (b) The division may:

1201 (i) determine whether weights and measures are correct through:

1202 (A) inspection and testing by department employees; or

1203 (B) acceptance of an inspection and testing report prepared by a registered weights  
1204 and measures service person;

1205 (ii) establish standards and qualifications for registered weights and measures service

1206 persons; and

1207 (iii) determine the form and content of an inspection and testing report.

1208 (c) A weights and measures user shall register with the department.

1209 (d) Prior to granting a registration to a weights and measures user, the department

1210 shall determine whether the weights and measures user complies with the rules established

1211 under Subsection (1)(a).

1212 (e) An applicant shall register with the department, in writing, using forms required by

1213 the department.

1214 (f) The department shall issue a registration to an applicant, if the department

1215 determines that the applicant meets the qualifications of registration established under

1216 Subsection (1)(a).

1217 (g) If the applicant does not meet the qualifications of registration, the department

1218 shall notify the applicant, in writing, that the applicant's registration is denied.

1219 (h) (i) If an applicant submits an incomplete application, a written notice of

1220 conditional denial of registration shall be provided to an applicant.

1221 (ii) The applicant [~~must~~] shall correct the deficiencies within the time period specified

1222 in the notice to receive a registration.

1223 (i) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights

1224 and measures user a registration fee.

1225 (ii) The department shall retain the fees as dedicated credits and shall use the fees to

1226 administer the registration of weights and measures users.

1227 (2) (a) A registration, issued under this section, shall be valid from the date the

1228 department issues the registration, to December 31 of the year the registration is issued.

1229 (b) A registration may be renewed for the following year by applying for renewal by

1230 December 31 of the year the registration expires.

1231 (3) A registration, issued under this section, shall specify:

1232 (a) the name and address of the weights and measures user;

1233 (b) the registration issuance and expiration date; and

- 1234 (c) the number and type of weights and measures devices to be certified.
- 1235 (4) (a) The department may immediately suspend a registration, issued under this
- 1236 section, if any of the requirements of Section 4-9-12 are violated.
- 1237 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for
- 1238 the reinstatement of a registration.
- 1239 (ii) If the department determines that all requirements under Section 4-9-12 are being
- 1240 met, the department shall reinstate the registration.
- 1241 (5) (a) A weights and measures user, registered under this section, shall allow the
- 1242 department access to the weights and measures user's place of business to determine if the
- 1243 weights and measures user is complying with the registration requirements.
- 1244 (b) If a weights and measures user denies access for an inspection required under
- 1245 Subsection (5)(a), the department may suspend the weights and measures user's registration
- 1246 until the department is allowed access to the weights and measures user's place of business.

1247 Section 25. Section **4-14-3** is amended to read:

1248 **4-14-3. Registration required for distribution -- Application -- Fees -- Renewal --**  
1249 **Local needs registration -- Distributor or applicator license -- Fees -- Renewal.**

- 1250 (1) (a) No person may distribute a pesticide in this state that is not registered with the
- 1251 department.
- 1252 (b) Application for registration shall be made to the department upon forms prescribed
- 1253 and furnished by it accompanied with an annual registration fee determined by the department
- 1254 pursuant to Subsection 4-2-2(2) for each pesticide registered.
- 1255 (c) Upon receipt by the department of a proper application and payment of the
- 1256 appropriate fee, the commissioner shall issue a registration to the applicant allowing
- 1257 distribution of the registered pesticide in this state through June 30 of each year, subject to
- 1258 suspension or revocation for cause.
- 1259 (d) (i) Each registration is renewable for a period of one year upon the payment of an
- 1260 annual registration renewal fee in an amount equal to the current applicable original
- 1261 registration fee.

- 1262 (ii) Each renewal fee shall be paid on or before June 30 of each year.
- 1263 (2) The application shall include the following information:
- 1264 (a) the name and address of the applicant and the name and address of the person  
1265 whose name will appear on the label, if other than the applicant's name;
- 1266 (b) the name of the pesticide;
- 1267 (c) a complete copy of the label which will appear on the pesticide; and
- 1268 (d) any information prescribed by rule of the department considered necessary for the  
1269 safe and effective use of the pesticide.
- 1270 (3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30  
1271 days before their registration expires.
- 1272 (b) A registration in effect on June 30 for which a renewal application has been filed  
1273 and the registration fee tendered shall continue in effect until the applicant is notified either  
1274 that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.
- 1275 (4) The department may, before approval of any registration, require the applicant to  
1276 submit the complete formula of any pesticide including active and inert ingredients and may  
1277 also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on  
1278 which restrictions are being considered, require a complete description of all tests and test  
1279 results that support the claims made by the applicant or the manufacturer of the pesticide.
- 1280 (5) A registrant who desires to register a pesticide to meet special local needs  
1281 according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and  
1282 (2), satisfy the department that:
- 1283 (a) a special local need exists;
- 1284 (b) the pesticide warrants the claims made for it;
- 1285 (c) the pesticide, if used in accordance with commonly accepted practices, will not  
1286 cause unreasonable adverse effects on the environment; and
- 1287 (d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).
- 1288 (6) No registration is required for a pesticide distributed in this state pursuant to an  
1289 experimental use permit issued by the EPA or under Section 4-14-5.

1290 (7) No pesticide dealer may distribute a restricted use pesticide in this state without a  
1291 license.

1292 (8) A person [~~must~~] shall receive a license before applying:

1293 (a) a restricted use pesticide; or

1294 (b) a general use pesticide for hire or in exchange for compensation.

1295 (9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be  
1296 obtained by:

1297 (i) submitting an application on a form provided by the department;

1298 (ii) paying the license fee determined by the department according to Subsection  
1299 4-2-2(2); and

1300 (iii) complying with the rules adopted as authorized by this chapter.

1301 (b) A person may apply for a license that expires on December 31:

1302 (i) of the calendar year in which the license is issued; or

1303 (ii) of the second calendar year after the calendar year in which the license is issued.

1304 (c) (i) Notwithstanding Section 63J-1-504, the department shall retain the fees as  
1305 dedicated credits and may only use the fees to administer and enforce this chapter.

1306 (ii) The Legislature may annually designate the revenue generated from the fee as  
1307 nonlapsing in an appropriations act.

1308 Section 26. Section **4-15-2** is amended to read:

1309 **4-15-2. Definitions.**

1310 As used in this chapter:

1311 (1) "Balled and burlapped stock" means nursery stock which is removed from the  
1312 growing site with a ball of soil containing its root system intact and encased in burlap or other  
1313 material to hold the soil in place;

1314 (2) "Bare-root stock" means nursery stock which is removed from the growing site  
1315 with the root system free of soil;

1316 (3) "Container stock" means nursery stock which is transplanted in soil or in a potting  
1317 mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient

1318 to allow newly developed fibrous roots to form so that if the plant is removed from the  
1319 container its root-media ball will remain intact;

1320 (4) "Etiolated growth" means bleached and unnatural growth resulting from the  
1321 exclusion of sunlight;

1322 (5) "Minimum indices of vitality" mean standards adopted by the department to  
1323 determine the health and vigor of nursery stock offered for sale in this state;

1324 (6) "Nonestablished container stock" means deciduous nursery stock which is  
1325 transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other  
1326 rigid container for a period insufficient to allow the formation of fibrous roots sufficient to  
1327 form a root-media ball;

1328 (7) "Nursery" means any place where nursery stock is propagated and grown for sale  
1329 or distribution;

1330 (8) "Nursery outlet" means any place or location where nursery stock is offered for  
1331 wholesale or retail sale;

1332 (9) "Nursery stock" means all plants, whether field grown, container grown, or  
1333 collected native plants; trees, shrubs, vines, grass sod; seedlings, perennials, biennials; and  
1334 buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or  
1335 distribution; except that it [~~shall not mean~~] does not include dormant bulbs, tubers, roots,  
1336 corms, rhizomes, pips; field, vegetable, or flower seeds; or bedding plants, annual plants,  
1337 florists' greenhouse or field-grown plants, flowers or cuttings;

1338 (10) "Place of business" means each separate nursery, or nursery outlet, where nursery  
1339 stock is offered for sale, sold, or distributed;

1340 (11) "Packaged stock" means bare-root stock which is packed either in bundles or in  
1341 single plants with the roots in some type of moisture-retaining material designed to retard  
1342 evaporation and hold the moisture-retaining material in place.

1343 Section 27. Section **4-15-10** is amended to read:

1344 **4-15-10. Infested or diseased stock not to be offered for sale -- Identification of**  
1345 **"nonestablished container stock" -- Requirements for container stock -- Inspected and**

1346 **certified stock only to be offered for sale -- Prohibition against coating aerial plant**  
1347 **surfaces.**

1348 (1) Nursery stock which is infested with plant pests, including noxious weeds, or  
1349 infected with disease or which does not meet minimum indices of vitality [~~shall not~~] may not  
1350 be offered for sale.

1351 (2) All nonestablished container stock offered for sale shall be identified by the words  
1352 "nonestablished container stock" legibly printed on a water resistant tag which states the  
1353 length of time it has been planted or the date it was planted and [~~shall not~~] may not be offered  
1354 for sale in any manner which leads a purchaser to believe it is container stock.

1355 (3) All container stock offered for sale shall be established with a root-media mass that  
1356 will retain its shape and hold together when removed from the container.

1357 (4) No nursery stock other than officially inspected and certified stock shall be offered  
1358 for wholesale or retail sale in this state.

1359 (5) Colored waxes or other materials which coat the aerial parts of a plant and change  
1360 the appearance of the plant surface are prohibited.

1361 Section 28. Section **4-17-7** is amended to read:

1362 **4-17-7. Notice of noxious weeds to be published annually in county -- Notice to**  
1363 **particular property owners to control noxious weeds -- Methods of prevention or control**  
1364 **specified -- Failure to control noxious weeds considered public nuisance.**

1365 (1) Each county weed control board before May 1 of each year shall post a general  
1366 notice of the noxious weeds within the county in at least three public places within the county  
1367 and publish the same notice on:

1368 (a) at least three occasions in a newspaper or other publication of general circulation  
1369 within the county; and

1370 (b) as required in Section 45-1-101.

1371 (2) If the county weed control board determines that particular property within the  
1372 county requires prompt and definite attention to prevent or control noxious weeds, it shall  
1373 serve the owner or the person in possession of the property, personally or by certified mail, a

1374 notice specifying when and what action [~~should~~] is required to be taken on the property.

1375 Methods of prevention or control may include definite systems of tillage, cropping, use of  
1376 chemicals, and use of livestock.

1377 (3) An owner or person in possession of property who fails to take action to control or  
1378 prevent the spread of noxious weeds as specified in the notice is maintaining a public  
1379 nuisance.

1380 Section 29. Section **4-22-3** is amended to read:

1381 **4-22-3. Commission -- Organization -- Quorum to transact business -- Vacancies**  
1382 **-- Ineligibility to serve -- Compensation.**

1383 (1) The members of the commission shall elect a chair, vice chair, and secretary from  
1384 among their number.

1385 (2) Attendance of a simple majority of the commission members at a called meeting  
1386 shall constitute a quorum for the transaction of official business.

1387 (3) The commission shall meet:

1388 (a) at the time and place designated by the chair; and

1389 (b) no less often than once every three months.

1390 (4) Vacancies which occur on the commission for any reason shall be filled for the  
1391 unexpired term of the vacated member by appointment of a majority of the remaining  
1392 members.

1393 (5) If a member moves from the district that he represents or ceases to act as a  
1394 producer during his term of office, he [~~must~~] shall resign from the commission within 30 days  
1395 after moving from the district or ceasing production.

1396 (6) (a) (i) Members who are not government employees shall receive no compensation  
1397 or benefits for their services, but may receive per diem and expenses incurred in the  
1398 performance of the member's official duties at the rates established by the Division of Finance  
1399 under Sections 63A-3-106 and 63A-3-107.

1400 (ii) Members may decline to receive per diem and expenses for their service.

1401 (b) (i) State government officer and employee members who do not receive salary, per

1402 diem, or expenses from their agency for their service may receive per diem and expenses  
1403 incurred in the performance of their official duties from the commission at the rates  
1404 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1405 (ii) State government officer and employee members may decline to receive per diem  
1406 and expenses for their service.

1407 (c) (i) Higher education members who do not receive salary, per diem, or expenses  
1408 from the entity that they represent for their service may receive per diem and expenses  
1409 incurred in the performance of their official duties from the committee at the rates established  
1410 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1411 (ii) Higher education members may decline to receive per diem and expenses for their  
1412 service.

1413 Section 30. Section **4-22-6** is amended to read:

1414 **4-22-6. Commission to conduct elections -- Nomination of candidates -- Expenses**  
1415 **of election paid by commission.**

1416 (1) (a) The commissioner shall administer all commission elections.

1417 (b) The commissioner shall mail a ballot to each producer within the district in which  
1418 an election is to be held by May 15 of each election year.

1419 (c) The candidate who receives the highest number of votes cast in the candidate's  
1420 district shall be elected.

1421 (d) The commissioner shall determine all questions of eligibility.

1422 (e) A ballot [~~must~~] shall be postmarked by May 31 of an election year.

1423 (f) (i) All ballots received by the commissioner shall be counted and tallied by June  
1424 15.

1425 (ii) A member of the commission whose name appears on a ballot may not participate  
1426 in counting or tallying the ballots.

1427 (2) (a) Candidates for election to the commission shall be nominated, not later than  
1428 April 15, by a petition signed by five or more producers who are residents of the district in  
1429 which the election is to be held.

1430 (b) If two or more candidates are not nominated by petition, the commission shall  
1431 select a nominating committee composed of three producers who are residents of the district  
1432 who shall select the candidates not nominated by petition.

1433 (3) The names of all nominees, whether nominated by petition or by a nominating  
1434 committee, shall be submitted to the commissioner on or before May 1 of each year in which  
1435 an election is held.

1436 (4) All election expenses incurred by the commissioner shall be paid by the  
1437 commission.

1438 Section 31. Section **4-23-5** is amended to read:

1439 **4-23-5. Board responsibilities -- Damage prevention policy -- Rules -- Methods to**  
1440 **control predators and depredating birds and animals.**

1441 (1) The board is responsible for the formulation of the agricultural and wildlife  
1442 damage prevention policy of the state and in conjunction with its responsibility may,  
1443 consistent with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to  
1444 implement its policy which shall be administered by the department.

1445 (2) In its policy deliberations the board shall:

1446 (a) specify programs designed to prevent damage to livestock, poultry, and agricultural  
1447 crops; and

1448 (b) specify methods for the prevention of damage and for the selective control of  
1449 predators and depredating birds and animals including[~~, but not limited to;~~] hunting, trapping,  
1450 chemical toxicants, and the use of aircraft.

1451 (3) The board may also:

1452 (a) specify bounties on designated predatory animals and recommend procedures for  
1453 the payment of bounty claims, recommend bounty districts, recommend persons not  
1454 authorized to receive bounty, and recommend to the department other actions it considers  
1455 advisable for the enforcement of its policies; and

1456 (b) cooperate with federal, state, and local governments, educational institutions, and  
1457 private persons or organizations, through agreement or otherwise, to effectuate its policies.

1458 Section 32. Section **4-23-6** is amended to read:

1459 **4-23-6. Department to issue licenses and permits -- Department to issue aircraft**  
1460 **use permits -- Reports.**

1461 The department is responsible for the issuance of permits and licenses for the purposes  
1462 of the federal Fish and Wildlife Act of 1956. No state agency or private person shall use any  
1463 aircraft for the prevention of damage without first obtaining a use permit from the department.  
1464 A state agency which contemplates the use of aircraft for the protection of agricultural crops,  
1465 livestock, poultry, or wildlife shall file an application with the department for an aircraft use  
1466 permit to enable the agency to issue licenses to personnel within the agency charged with the  
1467 responsibility to protect such resources. Persons who desire to use privately owned aircraft for  
1468 the protection of land, water, crops, wildlife, or livestock [~~shall not~~] may not engage in any  
1469 such protective activity without first obtaining an aircraft permit from the department.  
1470 Agencies and private persons which obtain aircraft use permits shall file such reports with the  
1471 department as it deems necessary in the administration of its licensing authority.

1472 Section 33. Section **4-23-8** is amended to read:

1473 **4-23-8. Proceeds of sheep fee -- Refund of sheep fees -- Annual audit of books,**  
1474 **records, and accounts.**

1475 (1) (a) The commissioner may spend an amount not to exceed the equivalent of 16  
1476 cents per head each year from the proceeds collected from the fee imposed on sheep for the  
1477 promotion, advancement, and protection of the sheep interests of the state.

1478 (b) All costs to promote or advance sheep interests shall be deducted from the total  
1479 revenue collected before calculating the annual budget request, which shall be made by the  
1480 Division of Wildlife Resources as specified in Section 4-23-9.

1481 (c) A sheep fee is refundable in an amount equal to that part of the fee used to  
1482 promote, advance, or protect sheep interests.

1483 (d) A refund claim [~~must~~] shall be filed with the department on or before January 1 of  
1484 the year immediately succeeding the year for which the fee was paid.

1485 (e) A refund claim [~~must~~] shall be certified by the department to the state treasurer for

1486 payment from the Agricultural and Wildlife Damage Prevention Account created in Section  
1487 4-23-7.5.

1488 (2) Any expense incurred by the department in administering refunds shall be paid  
1489 from funds allocated for the promotion, advancement, and protection of the sheep interests of  
1490 the state.

1491 (3) (a) The books, records, and accounts of the Utah Woolgrowers Association, or any  
1492 other organization which receives funds from the agricultural and wildlife damage prevention  
1493 account, for the purpose of promoting, advancing, or protecting the sheep interests of the state,  
1494 shall be audited at least once annually by a licensed accountant.

1495 (b) The results of this audit shall be submitted to the commissioner.

1496 Section 34. Section **4-24-2** is amended to read:

1497 **4-24-2. Definitions.**

1498 As used in this chapter:

1499 (1) "Brand" means any identifiable mark applied to livestock which is intended to  
1500 show ownership.

1501 (2) "Carcass" means any part of the body of an animal, including [~~but not limited to~~]  
1502 hides, entrails, and edible meats.

1503 (3) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.

1504 (4) "Hide" means any skins or wool removed from livestock.

1505 (5) "Livestock" means cattle, calves, horses, mules, sheep, goats, hogs, or  
1506 domesticated elk.

1507 (6) (a) "Livestock market" means a public market place consisting of pens or other  
1508 enclosures where cattle, calves, horses, or mules are received on consignment and kept for  
1509 subsequent sale, either through public auction or private sale.

1510 (b) "Livestock market" does not mean:

1511 (i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock  
1512 breeder, or feeder who is going out of business; or

1513 (ii) a place where an association of livestock breeders under its own management,

1514 offers registered livestock or breeding sires for sale and assumes all responsibility for the sale,  
1515 guarantees title to the livestock or sires sold, and arranges with the department for brand  
1516 inspection of all animals sold.

1517 (7) "Mark" means any dulap, waddle, or cutting and shaping of the ears or brisket area  
1518 of livestock which is intended to show ownership.

1519 (8) "Slaughterhouse" means any building, plant, or establishment where animals are  
1520 killed, dressed, or processed and their meat or meat products offered for sale for human  
1521 consumption.

1522 Section 35. Section **4-24-12** is amended to read:

1523 **4-24-12. Livestock -- Verification of ownership through brand inspection --**  
1524 **Issuance of certificate of brand inspection -- Brand inspector may demand evidence of**  
1525 **ownership-- Brand inspection of livestock seized by the federal government prohibited --**  
1526 **Exception.**

1527 (1) A brand inspector, as an agent of the department, shall verify livestock ownership  
1528 by conducting a brand inspection during daylight hours.

1529 (2) After conducting the brand inspection, the brand inspector, if satisfied that the  
1530 livestock subject to inspection bears registered brands or marks owned by the owner of the  
1531 livestock, shall issue a brand inspection certificate to the owner or owner's agent.

1532 (3) The brand inspector shall record the number, sex, breed, and brand or mark on  
1533 each animal inspected together with the owner's name.

1534 (4) If any livestock subject to inspection bears a brand or mark other than that of the  
1535 owner or, if no brand or mark appears on such livestock, the brand inspector may demand  
1536 evidence of ownership such as a bill of sale or other evidence of ownership before issuing a  
1537 brand inspection certificate.

1538 (5) A brand inspector [~~shall not~~] may not issue a brand inspection certificate for any  
1539 privately owned livestock seized by the federal government unless:

1540 (a) the brand inspector receives consent from the livestock's owner;

1541 (b) the owner is unknown; or

1542 (c) the brand inspector receives a copy of a court order authorizing the seizure.

1543 Section 36. Section **4-24-20** is amended to read:

1544 **4-24-20. Livestock sold at market to be brand inspected -- Proceeds of sale may**  
1545 **be withheld -- Distribution of withheld proceeds -- Effect of receipt of proceeds by**  
1546 **department -- Deposit of proceeds -- Use of proceeds if ownership not established.**

1547 (1) Livestock [~~shall not~~] may not be sold at any livestock market until after they have  
1548 been brand inspected by the department. Title to purchased livestock shall be furnished to the  
1549 buyer by the livestock market.

1550 (2) Upon notice from the department that a question exists concerning the ownership  
1551 of consigned livestock, the operator of the livestock market or meat packing plant shall  
1552 withhold the proceeds from the sale of the livestock for 60 days to allow the consignor of the  
1553 questioned livestock to establish ownership. If the owner or consignor fails within 60 days to  
1554 establish ownership to the satisfaction of the department, the proceeds of the sale shall be  
1555 transmitted to the department. Receipt of the proceeds by the department shall relieve the  
1556 livestock market or meat packing plant from further responsibility for the proceeds.

1557 (3) Proceeds withheld under Subsection (2) shall be deposited in the Utah Livestock  
1558 Brand and Anti-Theft Account created in Section 4-24-24. If ownership is not satisfactorily  
1559 established within one year, the department shall use the proceeds for animal identification.

1560 Section 37. Section **4-26-5** is amended to read:

1561 **4-26-5. Adjoining landowners -- Partition fences -- Contribution.**

1562 If two or more persons agree to a fence enclosure or to the construction of a partition  
1563 fence, the cost of construction and maintenance of the fence shall be apportioned between  
1564 each party to the agreement based upon the amount of land enclosed. A person who is a party  
1565 to such agreement and who fails to maintain such person's part of the fence is liable in a civil  
1566 action for any damage sustained by another party to the agreement as a result of the failure to  
1567 maintain the fence. If a person has enclosed land with a fence and the owner of adjoining land  
1568 desires to enclose land adjoining the fence so that the existing fence or any part of it will  
1569 become a partition fence between such tracts of land, the owner of the adjoining land shall

1570 before making the enclosure pay to the owner of the existing fence one-half of the value of all  
1571 that part of the fence that will become a partition fence; and when one party ceases to improve  
1572 or cultivate his land or opens his enclosure he [~~must not~~] may not take away any part of the  
1573 partition fence belonging to him, if the owner or occupant of the adjoining enclosure within 30  
1574 days after notice, pays for the value of such fence; nor shall the partition fence be removed if  
1575 the crops enclosed by it will be exposed to injury.

1576 Section 38. Section **4-29-2** is amended to read:

1577 **4-29-2. Restrictions on importation of chickens, turkeys, chicks, turkey poults,**  
1578 **and hatching eggs -- Certificate to accompany shipment -- Disposition of nonconforming**  
1579 **shipments.**

1580 (1) No chickens, turkeys, chicks, turkey poults, or hatching eggs to be used for  
1581 breeding purposes shall be imported to this state, or sold by hatcheries or others within this  
1582 state unless they originate from flocks participating in the pullorum control and eradication  
1583 phase of the National Poultry Improvement Plan, or the National Turkey Improvement Plan, or  
1584 have passed a negative agglutination blood test for pullorum disease administered under the  
1585 supervision of the department within 12 months prior to the date of sale.

1586 (2) Baby chicks, turkey poults, or hatching eggs to be used for purposes other than  
1587 breeding [~~shall not~~] may not be imported to this state, or sold by hatcheries or others within  
1588 this state unless they originate from flocks participating in the pullorum control and  
1589 eradication phase of the National Poultry Improvement Plan, or the National Turkey  
1590 Improvement Plan, or have passed a negative agglutination blood test for pullorum disease  
1591 administered under supervision of the department within 12 months prior to the date of sale.

1592 (3) A certificate issued by the appropriate authority of the "state of origin" shall  
1593 accompany each shipment of hatching eggs, baby chicks, poults, started chicks, started poults,  
1594 or chicken or turkey breed stock imported to this state. The certificate shall specify that the  
1595 contents of the shipment is free of pullorum or other poultry disease, the name and address of  
1596 the consignee in this state, the name and address of the person who consigned the poultry for  
1597 shipment, the name of the certifying authority in the state of origin, and the date the test or

1598 inspection for pullorum was performed by such authority.

1599 (4) The department may seize and destroy any shipment of chickens, chicks, turkeys,  
1600 poults, or hatching eggs transported into this state in contravention of this section without  
1601 notice to the person who consigned the poultry for shipment to this state, or it may return the  
1602 contents of the shipment to such person at the latter's expense.

1603 Section 39. Section **4-30-7.6** is amended to read:

1604 **4-30-7.6. Custodial accounts for trust funds.**

1605 (1) (a) Each payment that a livestock buyer makes to a livestock market selling on  
1606 commission is a trust fund.

1607 (b) Funds deposited in custodial accounts are trust funds.

1608 (2) Each livestock market engaged in selling livestock on a commission or agency  
1609 basis shall establish and maintain a separate bank account designated as "custodial account for  
1610 shippers' proceeds" or some similar identifying designation, to disclose that the depositor is  
1611 acting as a fiduciary and that the funds in the account are trust funds.

1612 (3) (a) The livestock market shall deposit in its custodial account before the close of  
1613 the next business day after the livestock is sold:

1614 (i) the proceeds from the sale of the livestock that have been collected; and

1615 (ii) an amount equal to the proceeds receivable from the sale of livestock that are due  
1616 from:

1617 (A) the livestock market;

1618 (B) any owner, officer, or employee of the livestock market; and

1619 (C) any buyer to whom the livestock market has extended credit.

1620 (b) The livestock market shall thereafter deposit in the custodial account all proceeds  
1621 collected until the account has been reimbursed in full, and shall, before the close of the  
1622 seventh day following the sale of livestock, deposit an amount equal to all the remaining  
1623 proceeds receivable whether or not the proceeds have been collected by the livestock market.

1624 (4) The custodial account shall be drawn on only for payment of:

1625 (a) the net proceeds to the consignor or shipper, or to any person that the livestock

1626 market knows is entitled to payment;

1627 (b) to pay lawful charges against the consignment of livestock which the market  
1628 agency shall, in its capacity as agent, be required to pay; and

1629 (c) to obtain any sums due the livestock market as compensation for its services.

1630 (5) (a) Each livestock market shall keep accounts and records that will disclose at all  
1631 times the handling of funds in the custodial account.

1632 (b) Accounts and records [~~must~~] shall at all times disclose the name of the consignors  
1633 and the amount due and payable to each from funds in the custodial account.

1634 (6) The custodial account [~~must~~] shall be established and maintained in a bank whose  
1635 deposits are insured by the Federal Deposit Insurance Corporation.

1636 Section 40. Section **4-31-16** is amended to read:

1637 **4-31-16. Contagious or infectious disease -- Duties of department.**

1638 (1) (a) The department shall investigate and may quarantine any reported case of  
1639 contagious or infectious disease, or any epidemic, or poisoning affecting domestic animals or  
1640 any animal or animals that it believes may jeopardize the health of animals within the state.

1641 (b) The department shall make a prompt and thorough examination of all  
1642 circumstances surrounding the disease, epidemic, or poisoning and may order quarantine,  
1643 care, or any necessary remedies.

1644 (c) The department may also order immunization or testing and sanitary measures to  
1645 prevent the spread of disease.

1646 (d) Investigations involving fish or wildlife shall be conducted under a cooperative  
1647 agreement with the Division of Wildlife Resources.

1648 (2) (a) If the owner or person in possession of such animals, after written notice from  
1649 the department, fails to take the action ordered, the commissioner is authorized to seize and  
1650 hold the animals and take action necessary to prevent the spread of disease, including [~~but not~~  
1651 ~~limited to:~~] immunization[;], testing[;], dipping[;], or spraying.

1652 (b) Animals seized for testing or treatment under this section shall be sold by the  
1653 commissioner at public sale to reimburse the department for all costs incurred in the seizure,

1654 testing, treatment, maintenance, and sale of such animals unless the owner sooner tenders  
1655 payment for the costs incurred by the department.

1656 (c) (i) No seized animal shall be sold, however, until the owner or person in possession  
1657 is served with a notice specifying the itemized costs incurred by the department and the time,  
1658 place, and purpose of sale and the number of animals to be sold.

1659 (ii) The notice shall be served at least three days in advance of sale in the manner:

1660 (A) prescribed for personal service in Rule 4(d)(1), Utah Rules of Civil Procedure; or

1661 (B) if the owner cannot be found after due diligence, in the manner prescribed for  
1662 service by publication in Rule 4(d)(4), Utah Rules of Civil Procedure.

1663 (3) Any amount realized from the sale of the animals over the total charges shall be  
1664 paid to the owner of the animals if the owner is known or can by reasonable diligence be  
1665 found; otherwise, the excess shall be paid to the tuberculosis and Bangs Disease Control  
1666 Account.

1667 Section 41. Section **4-31-16.5** is amended to read:

1668 **4-31-16.5. Brucellosis -- Vaccination required for certain cattle -- Testing**  
1669 **required to import certain cattle.**

1670 (1) As used in this section, "test-eligible" has the meaning defined in 9 C.F.R. Sec.  
1671 78.1.

1672 (2) (a) Instate origin replacement cattle that are kept for breeding stock [~~must~~] shall be  
1673 official calfhood vaccinated for brucellosis.

1674 (b) Female cattle from within the state that are not kept for breeding stock will not be  
1675 required to be vaccinated.

1676 (c) For purposes of this Subsection (2), the department may make rules in accordance  
1677 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing non-legible  
1678 brucellosis tattoos and may accept brucellosis vaccination record forms as evidence that  
1679 brucellosis vaccinations were performed.

1680 (3) All female beef-breed cattle imported into the state are required to be official  
1681 calfhood vaccinated for brucellosis except female cattle:

- 1682 (a) less than four months of age;
- 1683 (b) going directly to slaughter;
- 1684 (c) going to a qualified feedlot; or
- 1685 (d) going to an approved auction to be vaccinated on arrival or designated for
- 1686 slaughter only.

1687 (4) (a) Test-eligible cattle imported from states designated as brucellosis-free under 9  
1688 C.F.R. Sec. 78.43 that are acquired directly from the farm of origin are not required to be  
1689 tested for brucellosis before movement into the state.

1690 (b) Test-eligible cattle imported from states designated as brucellosis-free under 9  
1691 C.F.R. Sec. 78.43 that are acquired through trading channels [~~must~~] shall test negative for  
1692 brucellosis within 30 days before movement into the state.

1693 (5) Test-eligible cattle imported from states that have not been designated as  
1694 brucellosis-free under 9 C.F.R. Sec. 78.43 [~~must~~] shall test negative for brucellosis within 30  
1695 days before movement into the state.

1696 (6) The department may investigate situations where fees for brucellosis vaccinations  
1697 are considered to be excessive.

1698 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
1699 Administrative Rulemaking Act, for beef-breed cattle that are acquired for specialized  
1700 breeding purposes, and may exempt those cattle from brucellosis vaccination requirements.

1701 (8) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
1702 Administrative Rulemaking Act, to implement this section.

1703 Section 42. Section **4-32-3** is amended to read:

1704 **4-32-3. Definitions.**

1705 As used in this chapter:

1706 (1) "Adulterated" means any livestock product or poultry product that:

- 1707 (a) bears or contains any poisonous or deleterious substance that may render it
- 1708 injurious to health, but, if the substance is not an added substance, the livestock product [~~shall~~
- 1709 ~~not be~~] is not considered adulterated under this subsection if the quantity of the substance in

1710 or on the livestock product does not ordinarily render it injurious to health;

1711 (b) bears or contains, by reason of the administration of any substance to the livestock  
1712 or poultry or otherwise, any added poisonous or added deleterious substance which in the  
1713 judgment of the commissioner makes the livestock product unfit for human food;

1714 (c) contains, in whole or in part, a raw agricultural commodity and such commodity  
1715 bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec.  
1716 346a;

1717 (d) bears or contains any food additive that is unsafe within the meaning of 21 U.S.C.  
1718 Sec. 348;

1719 (e) bears or contains any color additive that is unsafe within the meaning of 21 U.S.C.  
1720 Sec. 379e; provided, that a livestock product which is not otherwise considered adulterated  
1721 under Subsections (1)(c), (d), or (e) of this section shall nevertheless be considered adulterated  
1722 if use of the pesticide chemical, food additive, or color additive is prohibited in official  
1723 establishments by rules of the department;

1724 (f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for  
1725 any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

1726 (g) has been prepared, packaged, or held under unsanitary conditions if it may have  
1727 become contaminated with filth, or if it may have been rendered injurious to health;

1728 (h) is in whole or in part the product of an animal that has died otherwise than by  
1729 slaughter;

1730 (i) is contained in a container that is composed, in whole or in part, of any poisonous  
1731 or deleterious substance that may render the meat product injurious to health;

1732 (j) has been intentionally subjected to radiation, unless the use of the radiation was in  
1733 conformity with a regulation or exemption in effect pursuant to 21 U.S.C. Sec. 348;

1734 (k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or  
1735 if damage or inferiority is concealed in any manner; or if any substance has been added,  
1736 mixed, or packed with the meat product to increase its bulk or weight, or reduce its quality or  
1737 strength, or to make it appear better or of greater value; or

- 1738 (1) is margarine containing animal fat and any of the raw material used in the  
1739 margarine consists in whole or in part of any filthy, putrid, or decomposed substance.
- 1740 (2) "Animal food manufacturer" means any person engaged in the business of  
1741 preparing animal food derived from livestock carcasses or parts or products of such carcasses.
- 1742 (3) "Broker" means any person engaged in the business of buying or selling livestock  
1743 or livestock products on commission, or otherwise negotiating purchases or sales of livestock  
1744 or livestock products other than for such person's own account.
- 1745 (4) "Capable of use as human food" means any livestock carcass, or part or product of  
1746 a carcass, unless it is denatured or otherwise identified as required by rules of the department  
1747 to deter its use as human food, or unless it is naturally inedible by humans.
- 1748 (5) "Container" or "package" means any box, can, tin, cloth, plastic, or other  
1749 receptacle, wrapper, or cover.
- 1750 (6) "Director of meat inspection" means a licensed graduate veterinarian whose duties  
1751 and responsibilities are specified by the commissioner.
- 1752 (7) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.
- 1753 (8) "Farm custom slaughter" means custom slaughtering of livestock or poultry for an  
1754 owner without inspection.
- 1755 (9) "Farm custom slaughter permit" means a permit issued by the department to allow  
1756 farm custom slaughter.
- 1757 (10) "Farm custom slaughter tag" means a tag which specifies the animal's  
1758 identification and certifies its ownership which is issued by the department through a brand  
1759 inspector to the owner of the animal before it is slaughtered.
- 1760 (11) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June  
1761 25, 1938 (52 Stat. 1040) (21 U.S.C. 301 et seq.), and any amendments to it.
- 1762 (12) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907  
1763 (34 Stat. 1260), as amended by the Wholesome Meat Act, 21 U.S.C. 601 et seq.; the term  
1764 "federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957  
1765 71 Stat. 441, as amended by the Wholesome Poultry Products Act, 82 Stat. 791 21 U.S.C. 451

1766 et seq.; and the term "federal acts" means these two federal acts.

1767 (13) "Immediate container" means any consumer package, or any other container in  
1768 which livestock products not consumer packaged, are packed.

1769 (14) "Inspector" means a licensed veterinarian or competent lay person working under  
1770 the supervision of a licensed graduate veterinarian.

1771 (15) "Label" means a display of printed, or graphic matter upon any livestock or  
1772 poultry product or the immediate container, not including package liners, of any such product.

1773 (16) "Labeling" means all labels and other printed, or graphic matter:

1774 (a) upon any livestock product or any of its containers or wrappers; or

1775 (b) accompanying a livestock product.

1776 (17) "Livestock" means any cattle, domesticated elk, sheep, swine, goats, horses,  
1777 mules or other equines, whether living or dead.

1778 (18) "Livestock product" means any carcass, part of a carcass, meat, or meat food  
1779 product of any livestock.

1780 (19) "Meat food product" means any product capable of use as human food that is  
1781 made wholly or in part from any meat or other part of the carcass of any cattle, sheep, swine,  
1782 or goats, excepting products that contain meat or other parts of such carcasses in relatively  
1783 small proportion or that historically have not been considered by consumers as products of the  
1784 meat food industry, and which are exempted from definition as a meat food product by the  
1785 commissioner. Meat food product as applied to food products of equines shall have a meaning  
1786 comparable to that provided in this subsection with respect to cattle, sheep, swine, and goats.

1787 (20) "Misbranded" means any livestock product or poultry product that:

1788 (a) bears a label that is false or misleading in any particular;

1789 (b) is offered for sale under the name of another food;

1790 (c) is an imitation of another food, unless the label bears, in type of uniform size and  
1791 prominence, the word "imitation" followed by the name of the food imitated;

1792 (d) if its container is so made, formed, or filled as to be misleading;

1793 (e) does not bear a label showing:

1794 (i) the name and place of business of the manufacturer, packer, or distributor; and  
1795 (ii) an accurate statement of the quantity of the product in terms of weight, measure, or  
1796 numerical count; provided, that under this Subsection (20)(e), exemptions as to livestock  
1797 products not in containers may be established by rules of the department and that under this  
1798 Subsection (20)(e)(ii), reasonable variations may be permitted, and exemptions for small  
1799 packages may be established for livestock or poultry products by rule of the department;

1800 (f) does not bear any word, statement, or other information required by or under  
1801 authority of this chapter to appear on the label or other labeling is not prominently placed with  
1802 such conspicuousness, as compared with other words, statements, designs, or devices, in the  
1803 labeling, and in such terms as to render it likely to be read and understood by the ordinary  
1804 individual under customary conditions of purchase and use;

1805 (g) is a food for which a definition and standard of identity or composition has been  
1806 prescribed by rules of the department under Section 4-32-7 if the food does not conform to  
1807 such definition and standard and the label does not bear the name of the food and any other  
1808 information that is required by the rule;

1809 (h) is a food for which a standard of fill has been prescribed by rule of the department  
1810 for the container and the actual fill of the container falls below that prescribed unless its label  
1811 bears, in such manner and form as such rules specify, a statement that it falls below such  
1812 standard;

1813 (i) is a food for which no standard or definition of identity has been prescribed under  
1814 Subsection (20)(g) unless its label bears:

1815 (i) the common or usual name of the food, if there be any; and  
1816 (ii) if it is fabricated from two or more ingredients, the common or usual name of each  
1817 such ingredient; except that spices, flavorings, and colorings may, when authorized by the  
1818 department, be designated as spices, flavorings, and colorings without naming each; provided,  
1819 that to the extent that compliance with the requirements of Subsection (20)(i)(ii) is  
1820 impracticable, or results in deception or unfair competition, exemptions shall be established by  
1821 rule;

1822 (j) is a food that purports to be or is represented to be for special dietary uses, unless  
1823 its label bears such information concerning its vitamin, mineral, and other dietary properties as  
1824 the department, after consultation with the Secretary of Agriculture of the United States,  
1825 prescribes by rules as necessary to inform purchasers as to its value for such uses;

1826 (k) bears or contains any artificial flavoring, artificial coloring, or chemical  
1827 preservative, unless it bears labeling stating that fact; provided, that to the extent that  
1828 compliance with the requirements of this subsection are impracticable, exemptions shall be  
1829 prescribed by rules of the department; or

1830 (l) does not bear directly thereon and on its containers, as the department may  
1831 prescribe by rule, the official inspection legend and establishment number of the official  
1832 establishment where the product was prepared, and, unrestricted by any of the foregoing, such  
1833 other information as the department may require by rules to assure that it will not have false or  
1834 misleading labeling and that the public will be informed of the manner of handling required to  
1835 maintain it in a wholesome condition.

1836 (21) "Official certificate" means any certificate prescribed by rules of the department  
1837 for issuance by an inspector or other person performing official functions under this chapter.

1838 (22) "Official device" means any device prescribed or authorized by the commissioner  
1839 for use in applying any official mark.

1840 (23) "Official establishment" means any establishment at which inspection of the  
1841 slaughter of livestock or the preparation of livestock products is maintained under the  
1842 authority of this chapter.

1843 (24) "Official inspection legend" means any symbol prescribed by rules of the  
1844 department showing that a livestock product was inspected and passed in accordance with this  
1845 chapter.

1846 (25) "Official mark" means the official legend or any other symbol prescribed by rules  
1847 of the department to identify the status of any livestock or livestock product under this  
1848 chapter.

1849 (26) "Permittee" means a person who holds a valid farm custom slaughter permit.

1850 (27) "Pesticide chemical," "food additive," "color additive," and "raw agricultural  
1851 commodity," have the same meanings for purposes of this chapter as ascribed to them in the  
1852 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

1853 (28) "Poultry" means any domesticated bird, whether living or dead.

1854 (29) "Poultry product" means any product capable of use as human food that is made  
1855 wholly or in part from any poultry carcass, excepting products that contain poultry ingredients  
1856 in relatively small proportion or that historically have not been considered by consumers as  
1857 products of the poultry food industry, and that are exempted from definition as a poultry  
1858 product by the commissioner.

1859 (30) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or  
1860 otherwise manufactured or processed.

1861 (31) "Renderer" means any person engaged in the business of rendering livestock  
1862 carcasses, or parts or products of such carcasses, except rendering conducted under inspection  
1863 or exemption under this chapter.

1864 (32) "Slaughter" means the killing of livestock or poultry in a humane manner  
1865 including skinning, dressing, or the process of performing any of the specified acts in  
1866 preparing livestock or poultry for human consumption.

1867 (33) "Slaughterhouse" or "custom slaughterhouse" means any building, plant, or  
1868 establishment used for the purpose of killing, dressing, or processing, whether such dressing or  
1869 processing is in conjunction with a killing operation or is a separate business, livestock or  
1870 livestock products or poultry or poultry products offered for sale or to be used for human  
1871 consumption.

1872 (34) "Slaughtering of livestock or poultry as a business" means the slaughtering of  
1873 livestock or poultry for the owner or caretaker of the livestock or poultry by a person who is  
1874 not a full-time employee of the owner or caretaker of such livestock or poultry.

1875 Section 43. Section **4-32-7** is amended to read:

1876 **4-32-7. Mandatory functions, powers, and duties of department prescribed.**

1877 The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative

1878 Rulemaking Act, regarding the following functions, powers, and duties, in addition to those  
1879 specified in Title 4, Chapter 1, Utah Agricultural Code, for the administration and  
1880 enforcement of this chapter:

1881 (1) The department shall require antemortem and postmortem inspections, quarantine,  
1882 segregation, and reinspections by inspectors appointed for those purposes with respect to the  
1883 slaughter of livestock and poultry and the preparation of livestock and poultry products at  
1884 official establishments, except as provided in Subsection 4-32-8(13).

1885 (2) The department shall require that:

1886 (a) livestock and poultry be identified for inspection purposes;

1887 (b) livestock or poultry products, or their containers be marked or labeled as:

1888 (i) "Utah Inspected and Passed" if, upon inspection, the products are found to be  
1889 unadulterated; and

1890 (ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be  
1891 adulterated; and

1892 (c) condemned products, which otherwise would be used for human consumption, be  
1893 destroyed under the supervision of an inspector.

1894 (3) The department shall prohibit or limit livestock products, poultry products, or  
1895 other materials not prepared under inspection procedures provided in this chapter, from being  
1896 brought into official establishments.

1897 (4) The department shall require that labels and containers for livestock and poultry  
1898 products:

1899 (a) bear all information required under Section 4-32-3 if the product leaves the official  
1900 establishment; and

1901 (b) be approved prior to sale or transportation.

1902 (5) For official establishments required to be inspected under Subsection (1), the  
1903 department shall:

1904 (a) prescribe sanitary standards;

1905 (b) require experts in sanitation or other competent investigators to investigate sanitary

1906 conditions; and

1907 (c) refuse to provide inspection service if the sanitary conditions allow adulteration of  
1908 any livestock or poultry product.

1909 (6) (a) The department shall require that any person engaged in a business referred to  
1910 in Subsection (6)(b) shall:

1911 (i) keep accurate records disclosing all pertinent business transactions;

1912 (ii) allow inspection of the business premises at reasonable times and examination of  
1913 inventory, records, and facilities; and

1914 (iii) allow inventory samples to be taken after payment of their fair market value.

1915 (b) Subsection (6)(a) shall refer to any person who:

1916 (i) slaughters livestock or poultry;

1917 (ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any livestock or  
1918 poultry products for human or animal consumption;

1919 (iii) renders livestock or poultry; or

1920 (iv) buys, sells, or transports any dead, dying, disabled, or diseased livestock or  
1921 poultry, or parts of their carcasses that died by a method other than slaughter.

1922 (7) (a) The department shall:

1923 (i) adopt by reference rules and regulations under federal acts with changes that the  
1924 commissioner considers appropriate to make the rules and regulations applicable to operations  
1925 and transactions subject to this chapter; and

1926 (ii) promulgate any other rules considered necessary for the efficient execution of the  
1927 provisions of this chapter, including rules of practice providing an opportunity for hearing in  
1928 connection with the issuance of orders under Subsection (5) or under Subsection 4-32-8(1),  
1929 (2), or (3) and prescribing procedures for proceedings in these cases.

1930 (b) These procedures [~~shall not~~] do not preclude requiring that a label or container be  
1931 withheld from use, or inspection be refused under Subsections (1) and (5), or Subsection  
1932 4-32-8(3), pending issuance of a final order in the proceeding.

1933 (8) (a) To prevent the inhumane slaughtering of livestock and poultry, inspectors shall

1934 be appointed to examine and inspect methods of handling and slaughtering livestock and  
1935 poultry.

1936 (b) Inspection of new slaughtering establishments may be refused or temporarily  
1937 suspended if livestock or poultry have been slaughtered or handled by any method not in  
1938 accordance with the Humane Methods of Slaughter Act of 1978, Public Law 95-445.

1939 (9) (a) The department shall require all livestock and poultry showing symptoms of  
1940 disease during antemortem inspection, performed by an inspector appointed for that purpose,  
1941 to be set apart and slaughtered separately from other livestock and poultry.

1942 (b) When slaughtered, the carcasses of livestock and poultry shall be subject to careful  
1943 examination and inspection in accordance with rules prescribed by the commissioner.

1944 Section 44. Section **4-32-16** is amended to read:

1945 **4-32-16. Detention of animals or livestock or poultry products -- Removal of**  
1946 **official marks.**

1947 Whenever any livestock or poultry product or any product exempted from the  
1948 definition of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock  
1949 or poultry, is found by any authorized representative of the commissioner, and there is reason  
1950 to believe that it is adulterated or misbranded and is capable of use as human food, or that it  
1951 has not been inspected and passed, or that it has been or is intended to be distributed in  
1952 violation of this chapter, it may be detained by such representative pending action under  
1953 Section 4-32-17, and [~~shall not~~] may not be moved by any person from the place at which it is  
1954 located when so detained, until released by such representative. All official marks may be  
1955 required by such representative to be removed from such product or animal before it is  
1956 released.

1957 Section 45. Section **4-32-22** is amended to read:

1958 **4-32-22. Animals slaughtered or the meat and poultry products not intended for**  
1959 **human use -- No inspection -- Products to be denatured or otherwise identified.**

1960 Inspection [~~shall not~~] may not be provided under this chapter at any establishment for  
1961 the slaughter of livestock or poultry or the preparation of any livestock products or poultry

1962 products that are not intended for use as human food, but such products shall be denatured or  
1963 otherwise identified as prescribed by rules of the department prior to their offer for sale or  
1964 transportation.

1965 Section 46. Section **4-35-7** is amended to read:

1966 **4-35-7. Notice to owner or occupant -- Corrective action required -- Directive**  
1967 **issued by department -- Costs -- Owner or occupant may prohibit spraying.**

1968 (1) The department or an authorized agent of the department shall notify the owner or  
1969 occupant of the problem and the available alternatives to remedy the problem. The owner or  
1970 occupant [~~must~~] shall take corrective action within 30 days.

1971 (2) If the owner or occupant fails to take corrective action under Subsection (1), the  
1972 department may issue a directive for corrective action which [~~must~~] shall be taken within 15  
1973 days. If the owner or occupant fails to act within the required time, the department shall take  
1974 the necessary action. The department may recover costs incurred for controlling an insect  
1975 infestation emergency from the owner or occupant of the property on whose property  
1976 corrective action was taken.

1977 (3) Owners or occupants of property may prohibit spraying by presenting an affidavit  
1978 from their attending physician to the department which states that the spraying as planned is a  
1979 danger to their health. The department shall provide the owner or occupant with alternatives  
1980 to spraying which will abate the infestation.

1981 Section 47. Section **4-37-102** is amended to read:

1982 **4-37-102. Purpose statement -- Aquaculture considered a branch of agriculture.**

1983 (1) The Legislature declares that it is in the interest of the people of the state to  
1984 encourage the practice of aquaculture, while protecting the public fishery resource, in order to  
1985 augment food production, expand employment, promote economic development, and protect  
1986 and better utilize the land and water resources of the state.

1987 (2) The Legislature further declares that aquaculture [~~should be~~] is considered a  
1988 branch of the agricultural industry of the state for purposes of any laws that apply to or provide  
1989 for the advancement, benefit, or protection of the agricultural industry within the state.

1990 Section 48. Section **4-37-109** is amended to read:

1991 **4-37-109. Department to make rules.**

1992 (1) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
1993 Administrative Rulemaking Act:

1994 (a) specifying procedures for the application and renewal of certificates of registration  
1995 for operating an aquaculture or fee fishing facility; and

1996 (b) governing the disposal or removal of aquatic animals from an aquaculture or fee  
1997 fishing facility for which the certificate of registration has lapsed or been revoked.

1998 (2) (a) The department may make other rules consistent with its responsibilities set  
1999 forth in Section 4-37-104.

2000 (b) Except as provided by this chapter, the rules authorized by Subsection (2)(a)  
2001 [~~must~~] shall be consistent with the suggested procedures for the detection and identification of  
2002 pathogens published by the American Fisheries Society's Fish Health Section.

2003 Section 49. Section **4-37-110** is amended to read:

2004 **4-37-110. Inspection of records and facilities.**

2005 (1) The following records and information [~~must~~] shall be maintained by an  
2006 aquaculture or fee fishing facility for a period of two years and [~~must~~] shall be available for  
2007 inspection by a department representative during reasonable hours:

2008 (a) records of purchase, acquisition, distribution, and production histories of aquatic  
2009 animals;

2010 (b) certificate of registration; and

2011 (c) valid identification of stocks, including origin of stocks.

2012 (2) Department representatives may conduct pathological, fish culture, or physical  
2013 investigations at any aquaculture, public aquaculture, or fee fishing facility during reasonable  
2014 hours.

2015 Section 50. Section **4-37-202** is amended to read:

2016 **4-37-202. Acquisition of aquatic animals for use in aquaculture facilities.**

2017 (1) Live aquatic animals intended for use in aquaculture facilities may be purchased or

2018 acquired only from:

2019 (a) aquaculture facilities within the state that have a certificate of registration and  
2020 health approval number;

2021 (b) public aquaculture facilities within the state that have a health approval number; or

2022 (c) sources outside the state that are health approved as provided in Part 5.

2023 (2) A person holding a certificate of registration for an aquaculture facility ~~must~~  
2024 shall submit annually to the department a record of each purchase of live aquatic animals and  
2025 transfer of live aquatic animals into the facility. This record ~~must~~ shall include the following  
2026 information:

2027 (a) name, address, and health approval number of the source;

2028 (b) date of transaction; and

2029 (c) number and weight by species.

2030 (3) The records required by Subsection (2) ~~must~~ shall be submitted to the department  
2031 before a certificate of registration is renewed or a subsequent certificate of registration is  
2032 issued.

2033 Section 51. Section **4-37-203** is amended to read:

2034 **4-37-203. Transportation of aquatic animals to or from aquaculture facilities.**

2035 (1) Any person holding a certificate of registration for an aquaculture facility may  
2036 transport the live aquatic animals specified on the certificate of registration to the facility or to  
2037 any person who has been issued a certificate of registration to possess those aquatic animals.

2038 (2) Each transfer or shipment of live aquatic animals from or to an aquaculture facility  
2039 within the state ~~must~~ shall be accompanied by documentation of the source and destination  
2040 of the fish, including:

2041 (a) name, address, certificate of registration number and health approval number of the  
2042 source;

2043 (b) number and weight being shipped, by species; and

2044 (c) name, address, and certificate of registration number of the destination.

2045 Section 52. Section **4-37-204** is amended to read:

2046 **4-37-204. Sale of aquatic animals from aquaculture facilities.**

2047 (1) (a) Except as provided by Subsection (1)(b), a person holding a certificate of  
2048 registration for an aquaculture facility may take an aquatic animal as approved on the  
2049 certificate of registration from the facility at any time and offer the aquatic animal for sale;  
2050 however, live aquatic animals may be sold within Utah only to a person who has been issued a  
2051 certificate of registration to possess the aquatic animal.

2052 (b) A person who owns or operates an aquaculture facility may stock a live aquatic  
2053 animal in a private fish pond if the person:

2054 (i) obtains a health approval number for the aquaculture facility;

2055 (ii) provides the private fish pond's owner with a brochure published by the Division  
2056 of Wildlife Resources that summarizes the statutes and rules related to a private fish pond and  
2057 the possession of an aquatic animal;

2058 (iii) inspects the private fish pond to verify that the private fish pond is in compliance  
2059 with Subsections 23-15-10(2) and (3)(c); and

2060 (iv) stocks the species, strain, and reproductive capability of aquatic animal authorized  
2061 by the Wildlife Board in accordance with Section 23-15-10 for stocking in the area where the  
2062 private fish pond is located.

2063 (2) An aquatic animal sold or transferred by the owner or operator of an aquaculture  
2064 facility ~~must~~ shall be accompanied by the seller's receipt that contains the following  
2065 information:

2066 (a) date of transaction;

2067 (b) name, address, certificate of registration number, health approval number, and  
2068 signature of seller;

2069 (c) number and weight of aquatic animal by:

2070 (i) species;

2071 (ii) strain; and

2072 (iii) reproductive capability; and

2073 (d) name and address of the receiver.

2074 (3) (a) A person holding a certificate of registration for an aquaculture facility [~~must~~]  
2075 shall submit to the department an annual report of each sale of live aquatic animals or each  
2076 transfer of live aquatic animals to:

- 2077 (i) another aquaculture facility; or
- 2078 (ii) a fee fishing facility.

2079 (b) The report [~~must~~] shall contain the following information:

- 2080 (i) name, address, and certificate of registration number of the seller or supplier;
- 2081 (ii) number and weight by species;
- 2082 (iii) date of sale or transfer; and
- 2083 (iv) name, address, phone number, and certificate of registration number of the  
2084 receiver.

2085 (4) (a) A person who owns or operates an aquaculture facility shall submit to the  
2086 Division of Wildlife Resources an annual report of each sale or transfer of a live aquatic  
2087 animal to a private fish pond.

2088 (b) The report shall contain:

- 2089 (i) the name, address, and health approval number of the person;
- 2090 (ii) the name, address, and phone number of the private fish pond's owner or operator;
- 2091 (iii) the number and weight of aquatic animal by:
  - 2092 (A) species;
  - 2093 (B) strain; and
  - 2094 (C) reproductive capability;
- 2095 (iv) date of sale or transfer;
- 2096 (v) the private fish pond's location; and
- 2097 (vi) verification that the private fish pond was inspected and is in compliance with

2098 Subsections 23-15-10(2) and (3)(c).

2099 (5) The reports required by Subsections (3) and (4) [~~must~~] shall be submitted before:

- 2100 (a) a certificate of registration is renewed or a subsequent certificate of registration is  
2101 issued for an aquaculture facility in the state; or

2102 (b) a health approval number is issued for an out-of-state source.

2103 Section 53. Section **4-37-302** is amended to read:

2104 **4-37-302. Acquisition of aquatic animals for use in fee fishing facilities.**

2105 (1) Live aquatic animals intended for use in fee fishing facilities may be purchased or  
2106 acquired only from:

2107 (a) aquaculture facilities within the state that have a certificate of registration and  
2108 health approval number;

2109 (b) public aquaculture facilities within the state that have a health approval number; or

2110 (c) sources outside the state that are health approved pursuant to Part 5.

2111 (2) (a) A person holding a certificate of registration for a fee fishing facility [~~must~~]  
2112 shall submit to the department an annual report of all live fish purchased or acquired.

2113 (b) The report [~~must~~] shall contain the following information:

2114 (i) name, address, and certificate of registration number of the seller or supplier;

2115 (ii) number and weight by species;

2116 (iii) date of purchase or transfer; and

2117 (iv) name, address, and certificate of registration number of the receiver.

2118 (c) The report [~~must~~] shall be submitted to the department before a certificate of  
2119 registration is renewed or subsequent certificate of registration is issued.

2120 Section 54. Section **4-37-303** is amended to read:

2121 **4-37-303. Transportation of live aquatic animals to fee fishing facilities.**

2122 (1) Any person holding a certificate of registration for a fee fishing facility may  
2123 transport the live aquatic animals specified on the certificate of registration to the facility.

2124 (2) Each transfer or shipment of live aquatic animals to a fee fishing facility within the  
2125 state [~~must~~] shall be accompanied by documentation of the source and destination of the fish,  
2126 including:

2127 (a) name, address, certificate of registration number and health approval number of the  
2128 source;

2129 (b) number and weight being shipped by species; and

2130 (c) name, address, and certificate of registration number of the destination.

2131 Section 55. Section **4-37-305** is amended to read:

2132 **4-37-305. Fishing license not required to fish at fee fishing facilities --**

2133 **Transportation of dead fish.**

2134 (1) A fishing license is not required to take fish from fee fishing facilities.

2135 (2) To transport dead fish from fee fishing facilities the fish [~~must~~] shall be

2136 accompanied by the seller's receipt containing the following information:

2137 (a) species and number of fish;

2138 (b) date caught;

2139 (c) certificate of registration number of the fee fishing facility; and

2140 (d) name, address, and telephone number of the seller.

2141 Section 56. Section **4-37-402** is amended to read:

2142 **4-37-402. Documentation required to import aquatic animals.**

2143 Any aquatic animals classified as controlled species by rules of the Wildlife Board that

2144 are imported into the state for use in aquaculture or fee fishing facilities [~~must~~] shall be

2145 accompanied by documentation indicating the following:

2146 (1) the health approval number assigned by the department to the source facility;

2147 (2) common or scientific names of the imported animals;

2148 (3) name and address of the consignor and consignee;

2149 (4) origin of shipment;

2150 (5) final destination;

2151 (6) number or pounds shipped;

2152 (7) purpose for which shipped;

2153 (8) method of transportation; and

2154 (9) any other information required by the department.

2155 Section 57. Section **4-37-502** is amended to read:

2156 **4-37-502. Inspections -- Health approval report -- Report for quarantine facility**

2157 **-- Qualifications of inspectors -- Notification of department.**

2158 (1) (a) Except as provided by Subsection (1)(b), approval shall be based upon  
2159 inspections carried out in accordance with standards and rules of the Fish Health Policy Board  
2160 made pursuant to Section 4-37-503.

2161 (b) An owner or operator of an aquaculture facility that is under quarantine or whose  
2162 health approval has been canceled or denied prior to July 1, 2007 may seek health approval  
2163 without submitting or complying with a biosecurity plan required by rule by submitting a new  
2164 health inspection report to the department.

2165 (2) (a) The inspections [~~must~~] shall be done by an individual who has received  
2166 certification from the American Fisheries Society as a fish health inspector.

2167 (b) An inspection of an aquaculture facility may not be done by an inspector who is  
2168 employed by, or has pecuniary interest in, the facility being inspected.

2169 (c) The department shall post on its website a current list of:

2170 (i) certified fish health inspectors; and

2171 (ii) approved laboratories to which a fish health inspector may send the samples  
2172 collected during the inspections required by this section.

2173 (d) (i) If the fish health inspector conducting the inspection is not an employee of the  
2174 department, the owner or operator of the aquaculture facility shall notify the department of the  
2175 date and time of the inspection at least five business days before the date on which the  
2176 inspection will occur.

2177 (ii) The department may be present for the inspection.

2178 (3) To receive a health approval number, inspection reports and other evidence of the  
2179 disease status of a source facility [~~must~~] shall be submitted to the agency responsible for  
2180 certifying the source as health approved pursuant to Section 4-37-501.

2181 Section 58. Section **4-37-503** is amended to read:

2182 **4-37-503. Fish Health Policy Board.**

2183 (1) There is created within the department the Fish Health Policy Board which shall  
2184 establish policies designed to prevent the outbreak of, control the spread of, and eradicate  
2185 pathogens that cause disease in aquatic animals.

2186 (2) The Fish Health Policy Board shall:  
2187 (a) in accordance with Subsection (6)(b), determine procedures and requirements for  
2188 certifying a source of aquatic animals as health approved, including:  
2189 (i) the pathogens for which inspection is required to receive health approval;  
2190 (ii) the pathogens that may not be present to receive health approval; and  
2191 (iii) standards and procedures required for the inspection of aquatic animals;  
2192 (b) establish procedures for the timely reporting of the presence of a pathogen and  
2193 disease threat;  
2194 (c) create policies and procedures for, and appoint, an emergency response team to:  
2195 (i) investigate a serious disease threat;  
2196 (ii) develop and monitor a plan of action; and  
2197 (iii) report to:  
2198 (A) the commissioner of agriculture and food;  
2199 (B) the director of the Division of Wildlife Resources; and  
2200 (C) the chair of the Fish Health Policy Board; and  
2201 (d) develop a unified statewide aquaculture disease control plan.  
2202 (3) The Fish Health Policy Board shall advise the commissioner of agriculture and  
2203 food and the executive director of the Department of Natural Resources regarding:  
2204 (a) educational programs and information systems to educate and inform the public  
2205 about practices that the public may employ to prevent the spread of disease; and  
2206 (b) communication and interaction between the department and the Division of  
2207 Wildlife Resources regarding fish health policies and procedures.  
2208 (4) (a) (i) The governor shall appoint the following seven members to the Fish Health  
2209 Policy Board:  
2210 (A) one member from names submitted by the Department of Natural Resources;  
2211 (B) one member from names submitted by the Department of Agriculture and Food;  
2212 (C) one member from names submitted by a nonprofit corporation that promotes sport  
2213 fishing;

2214 (D) one member from names submitted by a nonprofit corporation that promotes the  
2215 aquaculture industry;

2216 (E) one member from names submitted by the Department of Natural Resources and  
2217 the Department of Agriculture and Food;

2218 (F) one member from names submitted by a nonprofit corporation that promotes sport  
2219 fishing; and

2220 (G) one member from names submitted by a nonprofit corporation that promotes the  
2221 aquaculture industry.

2222 (ii) The members appointed under Subsections (4)(a)(i)(E) through (G) shall be:

2223 (A) (I) faculty members of an institution of higher education; or

2224 (II) qualified professionals; and

2225 (B) have education and knowledge in:

2226 (I) fish pathology;

2227 (II) business;

2228 (III) ecology; or

2229 (IV) parasitology.

2230 (iii) At least one member appointed under Subsections (4)(a)(i)(E) through (G) shall  
2231 have education and knowledge about fish pathology.

2232 (iv) (A) A nominating person shall submit at least three names to the governor.

2233 (B) If the governor rejects all the names submitted for a member, the recommending  
2234 person shall submit additional names.

2235 (b) Except as required by Subsection (4)(c), the term of office of board members shall  
2236 be four years.

2237 (c) Notwithstanding the requirements of Subsection (4)(b), the governor shall, at the  
2238 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
2239 board members are staggered so that approximately half of the board is appointed every two  
2240 years.

2241 (d) When a vacancy occurs in the membership for any reason, the replacement shall be

2242 appointed for the unexpired term.

2243 (e) The board members shall elect a chair of the board from the board's membership.

2244 (f) The board shall meet upon the call of the chair or a majority of the board members.

2245 (g) An action of the board shall be adopted upon approval of the majority of voting  
2246 members.

2247 (5) (a) (i) A member who is not a government employee may not receive compensation  
2248 or benefits for the member's service, but may receive per diem and expenses incurred in the  
2249 performance of the member's official duties at the rates established by the Division of Finance  
2250 under Sections 63A-3-106 and 63A-3-107.

2251 (ii) A member may decline to receive per diem and expenses for the member's service.

2252 (b) (i) A state government officer and employee member who does not receive salary,  
2253 per diem, or expenses from the agency the member represents for the member's service may  
2254 receive per diem and expenses incurred in the performance of the member's official duties at  
2255 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2256 (ii) A state government officer and employee member may decline to receive per diem  
2257 and expenses for the member's service.

2258 (c) (i) A higher education member who does not receive salary, per diem, or expenses  
2259 from the entity that the member represents for the member's service may receive per diem and  
2260 expenses incurred in the performance of the member's official duties at the rates established by  
2261 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2262 (ii) A higher education member may decline to receive per diem and expenses for the  
2263 member's service.

2264 (6) (a) The board shall make rules consistent with its responsibilities and duties  
2265 specified in this section.

2266 (b) Except as provided by this chapter, all rules adopted by the Fish Health Policy  
2267 Board [~~must~~] shall be consistent with the suggested procedures for the detection and  
2268 identification of pathogens published by the American Fisheries Society's Fish Health Section.

2269 (c) (i) Rules of the department and Fish Health Policy Board pertaining to the control

2270 of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace  
2271 those provisions.

2272 (ii) The Fish Health Policy Board shall promptly amend rules that are inconsistent  
2273 with the current suggested procedures published by the American Fisheries Society.

2274 (d) The Fish Health Policy Board may waive a requirement established by the Fish  
2275 Health Policy Board's rules if:

2276 (i) the rule specifies the waiver criteria and procedures; and

2277 (ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal  
2278 populations.

2279 Section 59. Section **4-39-201** is amended to read:

2280 **4-39-201. Fencing, posts, and gates.**

2281 (1) Each domesticated elk facility shall, at a minimum, meet the requirements of this  
2282 section and shall be constructed to prevent the movement of domesticated elk into or out of the  
2283 facility.

2284 (2) (a) All perimeter fences and gates shall be:

2285 (i) a minimum of eight feet above ground level; and

2286 (ii) constructed of hi-tensile steel.

2287 (b) At least the bottom four feet [~~must~~] shall be mesh with a maximum mesh size of 6"  
2288 x 6".

2289 (c) The remaining four feet shall be mesh with a maximum mesh size of 12" x 6".

2290 (3) The minimum wire gauge shall be 14-1/2 gauge for a 2 woven hi-tensile fence.

2291 (4) All perimeter gates at the entrances of domesticated elk handling facilities shall be  
2292 locked, with consecutive or self-closing gates when animals are present.

2293 (5) Posts shall be:

2294 (a) (i) constructed of treated wood which is at least four inches in diameter; or

2295 (ii) constructed of a material with the strength equivalent of Subsection (5)(a)(i);

2296 (b) spaced no more than 30 feet apart if one stay is used, or 20 feet apart if no stays are  
2297 used; and

- 2298 (c) at least eight feet above ground level and two feet below ground level.
- 2299 (6) Stays, between the posts, shall be:
- 2300 (a) constructed of treated wood or steel;
- 2301 (b) spaced no more than 15 feet from any post; and
- 2302 (c) at least eight feet above ground level, and two feet below ground level.
- 2303 (7) Corner posts and gate posts shall be braced wood or its strength equivalent.
- 2304 Section 60. Section **4-39-205** is amended to read:
- 2305 **4-39-205. License renewal.**
- 2306 (1) To renew a license, the licensee [~~must~~] shall submit to the department:
- 2307 (a) an inspection certificate showing that:
- 2308 (i) the domesticated elk, on the domesticated elk facility, have been inspected and
- 2309 certified by the department for health, proof of ownership, and genetic purity; and
- 2310 (ii) the facility has been properly maintained as provided in this chapter during the
- 2311 immediately preceding 60-day period; and
- 2312 (b) a record of each purchase of domesticated elk and transfer of domesticated elk into
- 2313 the facility, which [~~must~~] shall include the following information:
- 2314 (i) name, address, and health approval number of the source;
- 2315 (ii) date of transaction; and
- 2316 (iii) number and sex.
- 2317 (2) (a) If the application for renewal is not received on or before April 30, a late fee
- 2318 will be charged.
- 2319 (b) A license may not be renewed until the fee is paid.
- 2320 (3) If the application and fee for renewal are not received on or before July 1, the
- 2321 license may not be renewed, and a new license shall be required.
- 2322 Section 61. Section **4-39-206** is amended to read:
- 2323 **4-39-206. Records to be maintained.**
- 2324 (1) The following records and information [~~must~~] shall be maintained by a
- 2325 domesticated elk facility for a period of five years:

2326 (a) records of purchase, acquisition, distribution, and production histories of  
2327 domesticated elk;

2328 (b) records documenting antler harvesting, production, and distribution; and  
2329 (c) health certificates and genetic purity records.

2330 (2) For purposes of carrying out the provisions of this chapter and rules promulgated  
2331 under this chapter and, at any reasonable time during regular business hours, the department  
2332 shall have free and unimpeded access to inspect all records required to be kept.

2333 (3) The department may make copies of the records referred to in this section.

2334 Section 62. Section **4-39-302** is amended to read:

2335 **4-39-302. Acquisition of domesticated elk for use in domesticated elk facilities.**  
2336 Domesticated elk intended for use in domesticated elk facilities [~~must~~] shall meet all  
2337 health and genetic requirements of this chapter.

2338 Section 63. Section **4-39-304** is amended to read:

2339 **4-39-304. Marking domesticated elk.**

2340 (1) Each domesticated elk, not previously tattooed, [~~must~~] shall be marked by either a  
2341 tattoo, as provided in Subsection (2), or by a microchip, as provided in Subsection (3):

2342 (a) within 30 days of a change of ownership; or  
2343 (b) in the case of newborn calves, within 15 days after being weaned, but in any case,  
2344 no later than September 15.

2345 (2) If a domesticated elk is identified with a tattoo, the tattoo shall:

2346 (a) be placed peri-anally or inside the right ear; and  
2347 (b) consist of a four-digit herd number assigned by the department over a three-digit  
2348 individual animal number assigned by the owner.

2349 (3) If a domesticated elk is identified with a microchip, it [~~must~~] shall be placed in the  
2350 right ear.

2351 Section 64. Section **4-39-305** is amended to read:

2352 **4-39-305. Transportation of domesticated elk to or from domesticated elk**  
2353 **facilities.**

2354 Any domesticated elk transferred to or from a domesticated elk facility within the state  
2355 [~~must~~] shall be:

- 2356 (1) accompanied by a brand inspection certificate specifying the following:  
2357 (a) the name, address, and facility license number of the source;  
2358 (b) number, sex, and individual identification number; and  
2359 (c) name, address, and facility license number of the destination;  
2360 (2) accompanied by proof of genetic purity as provided in Section 4-39-301; and  
2361 (3) inspected by the department as provided in Section 4-39-306.

2362 Section 65. Section **4-39-306** is amended to read:

2363 **4-39-306. Inspection prior to movement, sale, removal of antlers, or slaughter.**

2364 (1) Each domesticated elk facility licensee shall have the domesticated elk inspected  
2365 by the department prior to any transportation, sale, removal of antlers, or slaughter.

2366 (2) Any person transporting or possessing domesticated elk or domesticated elk  
2367 products [~~must~~] shall have the appropriate brand inspection certificate in his or her possession.

2368 Section 66. Section **6-1-3** is amended to read:

2369 **6-1-3. Assignment to be written -- Contents -- Recording.**

2370 Every such assignment shall be by an instrument in writing, setting forth the name of  
2371 the assignor, his residence and business, the name of the assignee and his residence and  
2372 business, and in a general way describing the property assigned with its location, and stating  
2373 the purpose of the assignment. It shall be executed and acknowledged in the manner  
2374 prescribed for the execution and acknowledgment of deeds, and recorded in the office of the  
2375 recorder of the county where the property assigned is located. The assignor shall annex to such  
2376 instrument an inventory, under oath, of his estate, real and personal, according to the best of  
2377 his knowledge, and a list of his creditors and the amount of their respective demands; but such  
2378 inventory [~~shall not be~~] is not conclusive as to the amount of the debtor's estate, and such  
2379 assignment shall vest in the assignee the title to any other property belonging to the debtor at  
2380 the time of making the assignment, except property exempt from execution and insurance  
2381 upon the life of the assignor, unless the instrument mentions such exempt property and

2382 insurance and declares an intention of the assignor that they shall pass thereby. As soon as  
2383 such instrument is recorded it shall be filed, with the inventory and list of creditors, in the  
2384 office of the clerk of the district court of the county in which the property so assigned is  
2385 located; as shall all subsequent papers connected with such proceedings.

2386 Section 67. Section **6-1-9** is amended to read:

2387 **6-1-9. Taxes to be paid.**

2388 In all assignments of property for the benefit of creditors, assessments and taxes levied  
2389 thereon either under the laws of the state or ordinances of municipal corporations shall be  
2390 entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with  
2391 him.

2392 Section 68. Section **6-1-15** is amended to read:

2393 **6-1-15. Debts not matured -- Delay in filing claims.**

2394 Any creditor may claim debts to become due as well as debts due, but on debts not due  
2395 a reasonable rebate shall be made when the same are not drawing interest. Creditors who [~~shall~~  
2396 ~~not~~] do not file their claims within three months from the publication of notice as aforesaid  
2397 [~~shall not~~] may not participate in dividends until after payment in full of all claims presented  
2398 within said time and allowed by the court, unless the court has extended the time for filing  
2399 such claims.

2400 Section 69. Section **7-1-303** is amended to read:

2401 **7-1-303. Joint operations and information exchange by institutions.**

2402 The commissioner may authorize institutions subject to the jurisdiction of the  
2403 department to engage in such joint and cooperative actions as the commissioner finds will be  
2404 in the public interest, [~~such as, but not limited to~~] including:

- 2405 (1) mutual exchange of financial information as to depositors, borrowers, and other  
2406 customers;
- 2407 (2) joint use of facilities;
- 2408 (3) joint operation of clearing houses and other facilities for payment of checks, drafts,  
2409 or other instruments drawn on or issued by various classes of depository institutions;

- 2410 (4) joint participation in lending programs to promote the public welfare;
- 2411 (5) joint risk management services; and
- 2412 (6) joint ownership, operation, or furnishing of electronic funds transfer services.

2413 Section 70. Section **7-1-309** is amended to read:

2414 **7-1-309. Hearings by commissioner -- Discretion of commissioner -- Procedure --**  
2415 **Judicial review.**

2416 The commissioner may conduct or cause to be conducted hearings relating to matters  
2417 within his supervisory jurisdiction and shall establish rules for discovery and other procedures  
2418 applicable to the hearings consistent with the provisions of the Utah Rules of Civil Procedure.  
2419 The decision whether or not to hold a formal hearing on any matter coming before the  
2420 commissioner under this title shall be solely within the discretion of the commissioner. His  
2421 failure or refusal to hold a formal hearing [~~shall not be~~] is not a ground for reversal of any  
2422 decision or order of the commissioner unless the reviewing court finds that such failure or  
2423 refusal has deprived an interested party of due process of law, or that a formal hearing is  
2424 required by the provisions of this title.

2425 Section 71. Section **7-1-607** is amended to read:

2426 **7-1-607. Lost or destroyed account book or certificate.**

2427 If the holder of record of an account as shown by the books of a depository institution,  
2428 or his legal representative, files with the institution an affidavit to the effect that the account  
2429 book or certificate has been lost or destroyed and has not been pledged or assigned in whole or  
2430 in part, the institution shall issue a new account book or certificate in the name of the holder of  
2431 record. The new account book or certificate shall state that it is issued in lieu of the one lost or  
2432 destroyed. The institution [~~shall not be~~] is not liable thereafter on the original account book or  
2433 certificate. However, the board of directors of the institution shall, if in its judgment it is  
2434 necessary, require a bond in an amount it considers sufficient to indemnify the institution  
2435 against any loss which might result from the issuance of the new account book or certificate.

2436 Section 72. Section **7-1-612** is amended to read:

2437 **7-1-612. Pledge or hypothecation of joint savings accounts.**

2438           The pledge or hypothecation to any depository institution of all or part of a savings  
2439 account in joint tenancy signed by any tenant or tenants whether minor or adult, upon whose  
2440 signature or signatures withdrawals may be made from the account shall, unless the terms of  
2441 the savings account provide specifically to the contrary, be a valid pledge and transfer to the  
2442 institution of that part of the account pledged or hypothecated, and [~~shall not~~] does not operate  
2443 to sever or terminate the joint and survivorship ownership of all or any part of the account.

2444           Section 73. Section **7-1-806** is amended to read:

2445           **7-1-806. Money market funds arranging with bank to honor two-party**  
2446 **instruments -- Discouraging payment of interest to two persons on funds in transit --**  
2447 **Pyramiding and similar schemes as misdemeanors.**

2448           Nothing in this act shall be construed to prevent money market funds from making  
2449 arrangements with banks to honor two party checks, drafts, or other instruments.

2450           The commissioner shall exert his influence to discourage banks, money market funds  
2451 and other programs in Utah and throughout the United States from paying interest to two  
2452 persons at the same time on funds in the process of transfer.

2453           The process or the practice referred to as pyramiding or any similar process or practice  
2454 as defined by the commissioner, and such definition is approved by the governor, shall be  
2455 prohibited within this state and persons found guilty of these schemes shall be found guilty of  
2456 a class C misdemeanor. This [~~shall not~~] does not preclude more serious punishment under  
2457 federal law.

2458           Money market funds, similar funds and bank regulated institutions shall cooperate with  
2459 the commissioner to stop these practices.

2460           Section 74. Section **7-2-9** is amended to read:

2461           **7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment**  
2462 **of receiver -- Review of actions.**

2463           (1) Upon taking possession of the institution, the commissioner may appoint a  
2464 receiver to perform the duties of the commissioner. Subject to any limitations, conditions, or  
2465 requirements specified by the commissioner and approved by the court, a receiver shall have

2466 all the powers and duties of the commissioner under this chapter and the laws of this state to  
2467 act as a conservator, receiver, or liquidator of the institution. Actions of the commissioner in  
2468 appointing a receiver shall be subject to review only as provided in Section 7-2-2.

2469 (2) (a) If the deposits of the institution are to any extent insured by a federal deposit  
2470 insurance agency, the commissioner may appoint that agency as receiver. After receiving  
2471 notice in writing of the acceptance of the appointment, the commissioner shall file a certificate  
2472 of appointment in the commissioner's office and with the clerk of the district court. After the  
2473 filing of the certificate, the possession of all assets, business, and property of the institution is  
2474 considered transferred from the institution and the commissioner to the agency, and title to all  
2475 assets, business, and property of the institution is vested in the agency without the execution of  
2476 any instruments of conveyance, assignment, transfer, or endorsement.

2477 (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all  
2478 the powers and privileges provided by the laws of this state and the United States with respect  
2479 to the conservatorship, receivership, or liquidation of an institution and the rights of its  
2480 depositors, and other creditors, including authority to make an agreement for the purchase of  
2481 assets and assumption of deposit and other liabilities by another depository institution or take  
2482 other action authorized by Title 12 of the United States Code to maintain the stability of the  
2483 banking system. Such action by a federal deposit insurance agency may be taken upon  
2484 approval by the court, with or without prior notice. Such actions or agreements may be  
2485 disapproved, amended, or rescinded only upon a finding by the court that the decisions or  
2486 actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of  
2487 any conflict between state and federal law, including provisions for adjudicating claims  
2488 against the institution or receiver, the receiver shall comply with the federal law and any  
2489 resulting violation of state law [~~shall not~~] does not by itself constitute grounds for the court to  
2490 disapprove the actions of the receiver or impose any penalty for such violation.

2491 (c) The commissioner or any receiver appointed by him shall possess all the rights and  
2492 claims of the institution against any person whose breach of fiduciary duty or violations of the  
2493 laws of this state or the United States applicable to depository institutions may have caused or

2494 contributed to a condition which resulted in any loss incurred by the institution or to its assets  
2495 in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary  
2496 duty includes those duties and standards applicable under statutes and laws of this state and  
2497 the United States to a director, officer, or other party employed by or rendering professional  
2498 services to a depository institution whose deposits are insured by a federal deposit insurance  
2499 agency. Upon taking possession of an institution, no person other than the commissioner or  
2500 receiver shall have standing to assert any such right or claim of the institution, including its  
2501 depositors, creditors, or shareholders unless the right or claim has been abandoned by the  
2502 commissioner or receiver with approval of the court. Any judgment based on the rights and  
2503 claims of the commissioner or receiver shall have priority in payment from the assets of the  
2504 judgment debtors.

2505 (d) For the purposes of this section, the term "federal deposit insurance agency" shall  
2506 include the Federal Deposit Insurance Corporation, the National Credit Union Administration  
2507 and any departments thereof or successors thereto, and any other federal agency authorized by  
2508 federal law to act as a conservator, receiver, and liquidator of a federally insured depository  
2509 institution, including the Resolution Trust Corporation and any department thereof or  
2510 successor thereto.

2511 (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the  
2512 receiver is not a federal deposit insurance agency, the compensation to be paid such assistants,  
2513 agents, accountants, and legal counsel shall be approved by the commissioner. All expenses  
2514 incident to the receivership shall be paid out of the assets of the institution. If a receiver is not  
2515 a federal deposit insurance agency, the receiver and any assistants and agents shall provide  
2516 bond or other security specified by the commissioner and approved by the court for the faithful  
2517 discharge of all duties and responsibilities in connection with the receivership including the  
2518 accounting for money received and paid. The cost of the bond shall be paid from the assets of  
2519 the institution. Suit may be maintained on the bond by the commissioner or by any person  
2520 injured by a breach of the condition of the bond.

2521 (4) (a) Upon the appointment of a receiver for an institution in possession pursuant to

2522 this chapter, the commissioner and the department are exempt from liability or damages for  
2523 any act or omission of any receiver appointed pursuant to this section.

2524 (b) This section does not limit the right of the commissioner to prescribe and enforce  
2525 rules regulating a receiver in carrying out its duties with respect to an institution subject to the  
2526 jurisdiction of the department.

2527 (c) Any act or omission of the commissioner or of any federal deposit insurance  
2528 agency as a receiver appointed by him while acting pursuant to this chapter shall be deemed to  
2529 be the exercise of a discretionary function within the meaning of Section 63G-7-301 of the  
2530 laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

2531 (5) Actions, decisions, or agreements of a receiver under this chapter, other than  
2532 allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review  
2533 only as follows:

2534 (a) A petition for review shall be filed with the court having jurisdiction under Section  
2535 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or  
2536 its terms are filed with the court.

2537 (b) The petition shall state in simple, concise, and direct terms the facts and principles  
2538 of law upon which the petitioner claims the act, decision, or agreement of the receiver was or  
2539 would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may  
2540 be damaged thereby. The court shall dismiss any petition which fails to allege that the  
2541 petitioner would be directly injured or damaged by the act, decision, or agreement which is the  
2542 subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties  
2543 with respect to the allegations set forth in a petition or response.

2544 (c) The receiver shall have 30 days after service of the petition within which to  
2545 respond.

2546 (d) All further proceedings are to be conducted in accordance with the Utah Rules of  
2547 Civil Procedure.

2548 (6) All notices required under this section shall be made in accordance with the Utah  
2549 Rules of Civil Procedure and served upon the attorney general of the state of Utah, the

2550 commissioner of financial institutions, the receiver of the institution appointed under this  
2551 chapter, and upon the designated representative of any party in interest who requests in writing  
2552 such notice.

2553 Section 75. Section **7-2-10** is amended to read:

2554 **7-2-10. Inventory of assets -- Listings of claims -- Report of proceedings -- Filing**  
2555 **-- Inspection.**

2556 As soon as is practical after taking possession of an institution the commissioner, or  
2557 any receiver or liquidator appointed by him, shall make or cause to be made in duplicate an  
2558 inventory of its assets, one copy to be filed in his office and one with the clerk of the district  
2559 court. Upon the expiration of the time fixed for presentation of claims the commissioner, or  
2560 any receiver or liquidator appointed by him, shall make in duplicate a full and complete list of  
2561 the claims presented, including and specifying claims disallowed by him, of which one copy  
2562 shall be filed in his office and one copy in the office of the clerk of the district court. The  
2563 commissioner, or any receiver or liquidator appointed by him, shall in like manner make and  
2564 file supplemental lists showing all claims presented after the filing of the first list. The  
2565 supplemental lists shall be filed every six months and at least 15 days before the declaration of  
2566 any dividend. At the time of the order for final distribution the commissioner, or any receiver  
2567 or liquidator appointed by him, shall make a report in duplicate of the proceeding, showing the  
2568 disposition of the assets and liabilities of the institution, one copy to be filed in his office and  
2569 one with the clerk of the district court. The accounting, inventory, and lists of claims shall be  
2570 open at all reasonable times for inspection. Any objection to any report or accounting [~~must~~  
2571 shall] be filed with the clerk of the district court within 30 days after the report of accounting  
2572 has been filed by the commissioner, or any receiver or liquidator appointed by him, and shall  
2573 be subject to judicial review only as provided in Section 7-2-9.

2574 Section 76. Section **7-2-12** is amended to read:

2575 **7-2-12. Powers of commissioner in possession -- Sale of assets -- Postpossession**  
2576 **financing -- New deposit instruments -- Executory contracts -- Transfer of property --**  
2577 **Avoidance of transfers -- Avoidable preferences -- Setoff.**

2578           (1) Upon taking possession of the institution, the commissioner may do all things  
2579 necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the  
2580 affairs of the institution in a manner he determines to be in the best interests of the institution's  
2581 depositors and creditors. Any such determination by the commissioner may not be overruled  
2582 by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to  
2583 law. In the event of a liquidation, he shall collect all debts due and claims belonging to it, and  
2584 may compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or  
2585 all of the property of the institution for cash or other consideration. The commissioner shall  
2586 give such notice as the court may direct to the institution of the time and place of hearing upon  
2587 an application to the court for approval of the sale. The commissioner shall execute and  
2588 deliver to the purchaser of any property of the institution sold by him those deeds or  
2589 instruments necessary to evidence the passing of title.

2590           (2) With approval of the court and upon terms and with priority determined by the  
2591 court, the commissioner may borrow money and issue evidence of indebtedness. To secure  
2592 repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any  
2593 or all of the property of the institution superior to any charge on the property for expenses of  
2594 the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of  
2595 facilitating liquidation, protecting or preserving the assets in the charge of the commissioner,  
2596 expediting the making of distributions to depositors and other claimants, aiding in the  
2597 reopening or reorganization of the institution or its merger or consolidation with another  
2598 institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or  
2599 other person lawfully in charge of the affairs of the institution is under any personal obligation  
2600 to repay those loans. The commissioner may take any action necessary or proper to  
2601 consummate the loan and to provide for its repayment and to give bond when required for the  
2602 faithful performance of all undertakings in connection with it. The commissioner or special  
2603 deputy shall make application to the court for approval of any loan proposed under this  
2604 section. Notice of hearing upon the application shall be given as the court directs. At the  
2605 hearing upon the application any stockholder or shareholder of the institution or any depositor

2606 or other creditor of the institution may appear and be heard on the application. Prior to the  
2607 obtaining of a court order, the commissioner or special deputy in charge of the affairs of the  
2608 institution may make application or negotiate for the loan or loans subject to the obtaining of  
2609 the court order.

2610 (3) With the approval of the court pursuant to a plan of reorganization or liquidation  
2611 under Section 7-2-18, the commissioner may provide for depositors to receive new deposit  
2612 instruments from a depository institution that purchases or receives some or all of the assets of  
2613 the institution in the possession of the commissioner. All new deposit instruments issued by  
2614 the acquiring depository institution may, in accordance with the terms of the plan of  
2615 reorganization or liquidation, be subject to different amounts, terms, and interest rates than the  
2616 original deposit instruments of the institution in the possession of the commissioner. All  
2617 deposit instruments issued by the acquiring institution shall be considered new deposit  
2618 obligations of the acquiring institution. The original deposit instruments issued by the  
2619 institution in the possession of the commissioner are not liabilities of the acquiring institution,  
2620 unless assumed by the acquiring institution. Unpaid claims of depositors against the  
2621 institution in the possession of the commissioner continue, and may be provided for in the  
2622 plan of reorganization or liquidation.

2623 (4) The commissioner, after taking possession of any institution or other person  
2624 subject to the jurisdiction of the department, may terminate any executory contract, including  
2625 standby letters of credit, unexpired leases and unexpired employment contracts, to which the  
2626 institution or other person is a party. If the termination of an executory contract or unexpired  
2627 lease constitutes a breach of the contract or lease, the date of the breach is the date on which  
2628 the commissioner took possession of the institution. Claims for damages for breach of an  
2629 executory contract [~~must~~] shall be filed within 30 days of receipt of notice of the termination,  
2630 and if allowed, shall be paid in the same manner as all other allowable claims of the same  
2631 priority out of the assets of the institution available to pay claims.

2632 (5) With approval of the court and upon a showing by the commissioner that it is in  
2633 the best interests of the depositors and creditors, the commissioner may transfer property on

2634 account of an indebtedness incurred by the institution prior to the date of the taking.

2635           (6) (a) The commissioner may avoid any transfer of any interest of the institution in  
2636 property or any obligation incurred by the institution that is void or voidable by a creditor  
2637 under Title 25, Chapter 6.

2638           (b) The commissioner may avoid any transfer of any interest in real property of the  
2639 institution that is void as against or voidable by a subsequent purchaser in good faith and for a  
2640 valuable consideration of the same real property or any portion thereof who has duly recorded  
2641 his conveyance at the time possession of the institution is taken, whether or not such a  
2642 purchaser exists.

2643           (c) The commissioner may avoid any transfer of any interest in property of the  
2644 institution or any obligation incurred by the institution that is invalid or void as against, or is  
2645 voidable by a creditor that extends credit to the institution at the time possession of the  
2646 institution is taken by the commissioner, and that obtains, at such time and with respect to  
2647 such credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other  
2648 judicial lien on the property involved, whether or not such a creditor exists.

2649           (d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any  
2650 transfer of any interest in property of the institution shall be unaffected by and without regard  
2651 to any knowledge of the commissioner or of any creditor of the institution.

2652           (e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary  
2653 or involuntary, or disposing of or parting with property or with an interest in property,  
2654 including retention of title as a security interest.

2655           (f) The commissioner may avoid and recover any payment or other transfer of any  
2656 interest in property of the institution to or for the benefit of a creditor, for or on account of an  
2657 antecedent debt owed by the institution before the transfer was made if the creditor at the time  
2658 of such transfer had reasonable cause to believe that the institution was insolvent, and if the  
2659 payment or other transfer will allow the creditor to obtain a greater percentage of his debt than  
2660 he would be entitled to under the provisions of Section 7-2-15. For the purposes of this  
2661 subsection:

2662 (i) antecedent debt does not include earned wages and salaries and other operating  
2663 expenses incurred and paid in the normal course of business;

2664 (ii) a transfer of any interest in real property is deemed to have been made or suffered  
2665 when it became so far perfected that a subsequent good faith purchaser of the property from  
2666 the institution for a valuable consideration could not acquire an interest superior to the  
2667 transferee; and

2668 (iii) a transfer of property other than real property is deemed to have been made or  
2669 suffered when it became so far perfected that a creditor on a simple contract could not acquire  
2670 a lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest  
2671 of the transferee.

2672 (g) For purposes of this section, "date of possession" means the earlier of the date the  
2673 commissioner takes possession of a financial institution under Title 7, Chapter 2, or the date  
2674 when the commissioner enters an order suspending payments to depositors and other creditors  
2675 under Section 7-2-19.

2676 (7) (a) With or without the prior approval of the court, the commissioner or any federal  
2677 deposit insurance agency appointed by him as receiver or liquidator of a depository institution  
2678 closed by the commissioner under the provisions of this chapter may setoff against the  
2679 deposits or other liabilities of the institution any debts or other obligations of the depositor or  
2680 claimant due and owing to the institution. The amount of any setoff against the liabilities of  
2681 the institution shall be no greater than the amount the depositor or claimant would receive  
2682 pursuant to Section 7-2-15 after final liquidation of the institution. When the liquidation  
2683 value of a depositor's or claimant's claim against the institution will or may be less than the  
2684 full amount of the claim, setoff may be made prior to final liquidation if the commissioner or  
2685 any receiver or liquidator appointed by him can reasonably estimate the liquidation value of  
2686 the claim, and the court, after notice and opportunity for hearing, approves the estimate for  
2687 purposes of making the setoff. If the right of setoff is exercised, the commissioner or any  
2688 receiver or liquidator appointed by him shall give written notice to the depositor or claimant of  
2689 the amount setoff.

2690 (b) The existence and amount of a debtor or creditor relationship or both, between the  
2691 institution and its depositor or claimant and the right to the proceeds in a deposit account shall  
2692 be determined solely by the books and records of the institution.

2693 (c) Any contract purporting to affect the right of setoff [~~must~~] shall be in writing and  
2694 signed by the depositor-debtor and an authorized officer of the institution and be maintained  
2695 as a part of the records of the institution.

2696 (d) Any claim that a deposit account is a special account not subject to setoff because  
2697 it was maintained for a specific purpose or to satisfy a particular obligation other than  
2698 satisfaction of or as security for an indebtedness to the institution or that the right to the  
2699 deposit actually belongs to a third party [~~shall not~~] does not affect the right to setoff of the  
2700 commissioner or any receiver or liquidator appointed by him unless the special nature of the  
2701 account is clearly shown in the books and records of the institution.

2702 (e) In the absence of any other instrument in writing, the terms and provisions of the  
2703 signature card applicable to a particular account in effect at the time the commissioner takes  
2704 possession of the institution shall be determinative of the right of setoff by the commissioner  
2705 or any receiver or liquidator appointed by him.

2706 (f) Knowledge of the institution or of any director, officer, or employee of the  
2707 institution that the nature of the account is other than as shown in the books and records of the  
2708 institution [~~shall not~~] does not affect the right of setoff by the commissioner or any receiver or  
2709 liquidator appointed by him.

2710 (g) The liability of the commissioner or any receiver or liquidator appointed by him  
2711 for exercising a right of setoff other than as authorized by this section shall be only to a person  
2712 who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is  
2713 superior to that of the person whose debt to the institution was setoff against the account. The  
2714 amount of any such liability shall be no greater than the amount of the setoff and neither the  
2715 commissioner or any receiver or liquidator appointed by him shall be liable for any action  
2716 taken under this section unless the action taken is determined by the court to be arbitrary or  
2717 capricious.

2718 Section 77. Section **7-5-2** is amended to read:

2719 **7-5-2. Permit required to engage in trust business -- Exceptions.**

2720 (1) No trust company shall accept any appointment to act in any agency or fiduciary  
2721 capacity, [~~such as but not limited to~~] including that of personal representative, executor,  
2722 administrator, conservator, guardian, assignee, receiver, depository, or trustee under order or  
2723 judgment of any court or by authority of any law of this state or as trustee for any purpose  
2724 permitted by law or otherwise engage in the trust business in this state, unless and until it has  
2725 obtained from the commissioner a permit to act under this chapter. This provision [~~shall not~~]  
2726 does not apply to any bank or other corporation authorized to engage and lawfully engaged in  
2727 the trust business in this state before July 1, 1981.

2728 (2) Nothing in this chapter prohibits:

2729 (a) any corporation organized under Title 16, Chapter 6a or 10a, from acting as trustee  
2730 of any employee benefit trust established for the employees of the corporation or the  
2731 employees of one or more other corporations affiliated with the corporation;

2732 (b) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit  
2733 Corporation Act, and owned or controlled by a charitable, benevolent, eleemosynary, or  
2734 religious organization from acting as a trustee for that organization or members of that  
2735 organization but not offering trust services to the general public;

2736 (c) any corporation organized under Title 16, Chapter 6a or 10a, from holding in a  
2737 fiduciary capacity the controlling shares of another corporation but not offering trust services  
2738 to the general public; or

2739 (d) any depository institution from holding in an agency or fiduciary capacity  
2740 individual retirement accounts or Keogh plan accounts established under Section 401(a) or  
2741 408(a) of Title 26 of the United States Code.

2742 Section 78. Section **7-5-4** is amended to read:

2743 **7-5-4. Withdrawal from trust business.**

2744 Any trust company which desires to withdraw from and discontinue doing a trust  
2745 business shall furnish to the commissioner satisfactory evidence of its release and discharge

2746 from all the obligations and trusts undertaken by it, and after the company has furnished that  
2747 evidence the commissioner shall revoke his certificate of authority to do a trust business  
2748 previously issued to that trust company, and thereafter that trust company [~~shall not~~] may not  
2749 be permitted to use and [~~shall not~~] may not use the word "trust" in its corporate name or in  
2750 connection with its business, nor undertake the administration of any trust business.

2751 Section 79. Section **7-5-7** is amended to read:

2752 **7-5-7. Management and investment of trust funds.**

2753 (1) Funds received or held by any trust company as agent or fiduciary, whether for  
2754 investment or distribution, shall be invested or distributed as soon as practicable as authorized  
2755 under the instrument creating the account and [~~shall not~~] may not be held uninvested any  
2756 longer than is reasonably necessary.

2757 (2) If the instrument creating an agency or fiduciary account contains provisions  
2758 authorizing the trust company, its officers, or its directors to exercise their discretion in the  
2759 matter of investments, funds held in the trust account under that instrument may be invested  
2760 only in those classes of securities which are approved by the directors of the trust company or  
2761 a committee of directors appointed for that purpose. If a trust company acts in any agency or  
2762 fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and  
2763 account for all investments according to the provisions of Title 75, Utah Uniform Probate  
2764 Code, unless the underlying instrument provides otherwise.

2765 (3) (a) Funds received or held as agent or fiduciary by any trust company which is also  
2766 a depository institution, whether for investment or distribution, may be deposited in the  
2767 commercial department or savings department of that trust company to the credit of its trust  
2768 department. Whenever the funds so deposited in a fiduciary or managing agency account  
2769 exceed the amount of federal deposit insurance applicable to that account, the trust company  
2770 shall deliver to the trust department or put under its control collateral security as outlined in  
2771 Regulation 9.10 of the Comptroller of the Currency or in Regulation 550.8 of the Office of  
2772 Thrift Supervision, as amended. However, if the instrument creating such a fiduciary or  
2773 managing agency account expressly provides that funds may be deposited to the commercial

2774 or savings department of the trust company, then the funds may be so deposited without  
2775 setting aside collateral securities as required under this section and the deposits in the event of  
2776 insolvency of any such trust company shall be treated as other general deposits are treated. A  
2777 trust company which deposits trust funds in its commercial or savings department shall be  
2778 liable for interest on the deposits only at the rates, if any, paid by the trust company on  
2779 deposits of like kind not made to the credit of its trust department.

2780 (b) Funds received or held as agent or fiduciary by a trust company, whether for  
2781 investment or distribution, may be deposited in an affiliated depository institution. Whenever  
2782 the funds so deposited in a fiduciary or managing agency account exceed the amount of  
2783 federal deposit insurance applicable to that account, the depository institution shall deliver to  
2784 the trust company or put under its control collateral security as outlined in Regulation 9.10 of  
2785 the Comptroller of the Currency or in Regulation 550.8 of the Office of Thrift Supervision as  
2786 amended. However, if the instrument creating the fiduciary or managing agency account  
2787 expressly permits funds to be deposited in the affiliated depository institution, the funds may  
2788 be so deposited without setting aside collateral securities as required under this section and  
2789 deposits in the event of insolvency of the depository institution shall be treated as other  
2790 general deposits are treated. A trust company which deposits trust funds in an affiliated  
2791 depository institution is liable for interest on the deposits only at the rates, if any, paid by the  
2792 depository institution on deposits of like kind.

2793 (4) In carrying out all aspects of its trust business, a trust company shall have all the  
2794 powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to  
2795 trustees, whether or not the trust company is acting as a trustee as defined in Title 75.

2796 (5) Nothing in this section may alter, amend, or limit the powers of a trust company  
2797 acting in a fiduciary capacity as specified in the particular instrument or order creating the  
2798 fiduciary relationship.

2799 Section 80. Section **7-5-8** is amended to read:

2800 **7-5-8. Segregation of trust assets -- Books and records required -- Examination**  
2801 **-- Trust property not subject to claims or debts against trust company.**

2802           A trust company exercising the powers to act as an agent or fiduciary under this  
2803 chapter shall segregate all assets held in any agency or fiduciary capacity from the general  
2804 assets of the company and shall keep a separate set of books and records showing in proper  
2805 detail all transactions engaged in under authority of this chapter. These books and records  
2806 shall be open to inspection by the commissioner and shall be examined by him or by  
2807 examiners appointed by him as provided in Chapter 1 or examined by other appropriate  
2808 regulating agencies or both. Property held in an agency or fiduciary capacity by a trust  
2809 company [~~shall not be~~] is not subject to claims or debts against the trust company.

2810           Section 81. Section **7-5-11** is amended to read:

2811           **7-5-11. Self-dealing with trust property -- Own stock as trust property -- Policies**  
2812 **for dealing with trust securities.**

2813           (1) Except as provided in Section 7-5-7, in Title 75, or as authorized under the  
2814 instrument creating the relationship, a trust company [~~shall not~~] may not invest funds held as  
2815 an agent or fiduciary in stock or obligations of, or with such funds acquire property from, the  
2816 trust company or any of its directors, officers or employees, nor shall a trust company sell  
2817 property held as an agent or fiduciary to the company or to any of its directors, officers, or  
2818 employees.

2819           (2) A trust company may retain and vote stock of the trust company or of any of its  
2820 affiliates received by it as assets of any trust account or in any other fiduciary relationship of  
2821 which it is appointed agent or fiduciary, unless the instrument creating the relationship  
2822 otherwise provides.

2823           (3) Every trust company shall adopt written policies and procedures regarding  
2824 decisions or recommendations to purchase or sell any security to facilitate compliance with  
2825 federal and state securities laws. These policies and procedures, in particular, shall prohibit the  
2826 trust company from using material inside information in connection with any decision or  
2827 recommendation to purchase or sell any security.

2828           Section 82. Section **7-7-2** is amended to read:

2829           **7-7-2. Definitions.**

2830 As used in this chapter:

2831 (1) "Association" means a mutual or capital stock savings association, a savings and  
2832 loan association, a mutual or capital stock savings bank, or a building and loan association  
2833 subject to the provisions of this chapter, including all out-of-state associations qualified to do  
2834 business in this state.

2835 (2) "Federal association" means a savings association, a savings and loan association,  
2836 or a savings bank, chartered by the Office of Thrift Supervision or successor federal agency.

2837 (3) "Impaired condition" means a condition in which the assets of an association in the  
2838 aggregate do not have a fair value equal to the aggregate amount of liabilities of the  
2839 association to its creditors, including the holders of its savings accounts and all other persons.

2840 (4) "Insured association" means an association the deposit accounts of which are  
2841 insured by the Federal Deposit Insurance Corporation or any successor agency of the federal  
2842 government.

2843 (5) "Liquid assets" means cash on hand and cash on deposit in federal home loan  
2844 banks, federal reserve banks, state banks performing similar reserve functions, or in  
2845 commercial banks, which cash is withdrawable upon not more than 30 days notice and which  
2846 is not pledged as security for indebtedness. Any deposits in a financial institution under the  
2847 control or in the possession of any supervisory authority [~~shall not~~] may not be considered as  
2848 liquid assets. Liquid assets also means obligations of, or obligations that are fully guaranteed  
2849 as to principal and interest by, the United States, the Federal National Mortgage Association,  
2850 the Government National Mortgage Association, any federal home loan bank, or this state,  
2851 which obligations will mature in five years or less, and any other assets readily convertible into  
2852 cash.

2853 (6) "Out-of-state association" means an association whose home state is not Utah.

2854 (7) "Real estate loan" means any loan or other obligation secured by a lien on real  
2855 estate in any state held in fee or in a leasehold, and any transaction out of which a lien or its  
2856 equivalent is created against real estate, including the purchase of real estate in fee by an  
2857 association and the concurrent or immediate sale of the real estate on installment contract.

2858 (8) "Savings liability" means the aggregate amount of savings accounts of depositors,  
2859 including earnings credited to those accounts, less redemptions and withdrawals.

2860 (9) "Service organization" means an organization substantially all the activities of  
2861 which consist of originating, purchasing, selling, or servicing loans and participating interests  
2862 therein, or clerical, bookkeeping, accounting, statistical, or other similar functions or any  
2863 combination thereof performed primarily for financial institutions, plus such other activities as  
2864 the commissioner may approve.

2865 (10) "Supervisor" means the supervisor of savings and loan associations.

2866 (11) "Surplus" means the aggregate amount of the undistributed net income of an  
2867 association held as undivided profits or unallocated reserves for general corporate purposes,  
2868 and any paid-in surplus held by an association.

2869 (12) "Withdrawal value" means the amount credited to a savings account less lawful  
2870 deductions, as shown by the records of the association.

2871 Section 83. Section **7-7-4** is amended to read:

2872 **7-7-4. Mutual association -- Chair of incorporators -- Surety bond or escrow --**  
2873 **Capital requirements -- Expense fund -- Organization meeting.**

2874 (1) The incorporators of a mutual association shall appoint one of their number as  
2875 chair of the incorporators. This chair shall procure from a surety company or other surety  
2876 acceptable to the commissioner, a surety bond in an amount at least equal to the amount  
2877 subscribed by the incorporators plus the expense fund described in Subsection (2). This bond  
2878 shall name the commissioner as obligee and shall be delivered to him. It shall assure the  
2879 safekeeping of the funds described, their delivery to the association after the issuance of the  
2880 certificate of authority and after the bonding of the officers, and, in the event of the failure to  
2881 complete organization, the return of the amounts collected to the respective subscribers or their  
2882 assigns, less reasonable expense which shall be deducted from the expense fund. The required  
2883 surety may be waived by the commissioner if the funds are held in escrow so as to provide  
2884 similar assurance with regard to the funds. Before a certificate of authority is issued, the  
2885 incorporators shall pay in cash, to the chairman, as subscriptions to the savings accounts of the

2886 proposed association, including that part of the original subscription paid by the chairman.  
2887 The minimum required capital shall be prescribed by the commissioner by rule. These capital  
2888 requirements may not be greater than those required by the Office of Thrift Supervision or  
2889 successor agency for the formation of a federally chartered mutual association.

2890 (2) The incorporators, in addition to their subscriptions to savings accounts, shall  
2891 create an expense fund in an amount not less than 25% of the minimum amount of savings  
2892 account subscriptions required to be paid under this chapter. From this expense fund the  
2893 expense of organizing the association and its operating expenses may be paid until such time  
2894 as its net income is sufficient to pay such earnings as may be declared and paid or credited to  
2895 its savings account holders from sources available for payment of earnings. The incorporators  
2896 and others, before a certificate of authority is issued, shall deposit to the credit of the chairman  
2897 of the incorporators in cash the amount of the expense fund. The amounts contributed to the  
2898 expense fund by the incorporators and others [~~shall not~~] do not constitute a liability of the  
2899 association except as provided by this chapter.

2900 (3) Contributions made by the incorporators and others to the expense fund may be  
2901 repaid pro rata to the contributors from the net income of the association after provision for  
2902 statutory reserves and declaration of earnings of not less than 2% on savings accounts. If an  
2903 association is liquidated before contributions to the expense fund have been repaid, any  
2904 contributions to the expense fund remaining unexpended, after the payment of expenses of  
2905 liquidation, all creditors, and the withdrawal value of all savings accounts, shall be repaid to  
2906 the contributors pro rata. The books of the association shall reflect the expense fund.  
2907 Contributors to the expense fund shall at the times earnings regularly are distributed to savings  
2908 account holders be paid earnings on the amounts paid in by them and for that purpose the  
2909 contributions shall in all respects be considered as savings accounts of the association.

2910 (4) Within 90 days after the corporate existence of an association begins, the directors  
2911 of the association shall hold an organization meeting and shall adopt bylaws and elect officers  
2912 under this chapter. At the organization meeting the directors shall take such other action as is  
2913 appropriate in connection with beginning the transaction of business by the association. The

2914 commissioner may extend by order the time within which the organization meeting shall be  
2915 held.

2916 Section 84. Section ~~7-7-7~~ is amended to read:

2917 **7-7-7. Conversion of associations.**

2918 (1) Any state or federal mutual association and any federal capital stock association  
2919 may convert to a state capital stock association, and any state or federal capital stock  
2920 association and any federal mutual association may convert to a state mutual association upon  
2921 an equitable basis subject to the laws and rules governing the converting association, the  
2922 approval of the commissioner, the approval of the members or stockholders of the converting  
2923 association, and any rules adopted by the commissioner under this subsection.

2924 (a) Upon receipt of the approval of a proposed conversion from the commissioner, a  
2925 converting association may, under the supervision of the supervisor, carry out the plan of  
2926 conversion. A record of all acts and proceedings taken by the board of directors of the  
2927 converting association in carrying out the proposed conversion shall be filed with the  
2928 supervisor.

2929 (b) Upon the issuance to an applicant of a certificate of conversion, the corporate  
2930 existence of the converting applicant [~~shall not~~ does not terminate, but the applicant shall be a  
2931 continuation of the entity so converted. All property of the converting applicant, including its  
2932 rights, titles, and interests in and to all property of whatever kind, whether real, personal, or  
2933 mixed, things in action, and every right, privilege, interest and asset of any conceivable value  
2934 or benefit then existing, or pertaining to it, or which would inure to it, immediately, by  
2935 operation of law and without any conveyance or transfer and without any further act or deed,  
2936 shall vest in and remain the property of the converted applicant, and the same shall have, hold,  
2937 and enjoy that property in its own right as fully and to the same extent as that property was  
2938 possessed, held, and enjoyed by the converting applicant before the conversion, and the  
2939 converted applicant, upon issuance of the certificate of the conversion, shall continue to have  
2940 and succeed to all the rights, obligations, and relations of the converting applicant. Pending  
2941 actions and other judicial proceedings to which the converting applicant is a party [~~shall not~~

2942 be] are not abated or discontinued by reason of the conversion, but may be prosecuted to final  
2943 judgment, order, or decree in the same manner as if conversion had not occurred, and the  
2944 converted applicant may continue the actions in its new corporate name. Any judgment,  
2945 order, or decree may be rendered for or against it which might have been rendered for or  
2946 against the converting applicant involved before the conversion in the proceedings.

2947 (c) A conversion carried out under this Subsection (1) is effective on the date that all  
2948 provisions of this chapter and the rules adopted under it have been complied with and a  
2949 certificate of conversion has been issued by the commissioner.

2950 (d) In adopting rules or issuing orders in connection with the conversion of an  
2951 association, the commissioner shall ensure that:

2952 (i) accurate and adequate disclosure of the terms and effects of plans of conversion are  
2953 provided to purchasers of capital stock in resulting associations, including account holders of  
2954 converting mutual associations;

2955 (ii) adjustments are made in plans of conversion to be effected by way of merger or  
2956 holding company acquisition necessary or appropriate to accomplish the purposes of this  
2957 section;

2958 (iii) plans of conversion and proxy statements, offering circulars and related  
2959 instruments and actions implementing those plans are subject to review and approval by the  
2960 appropriate supervisory authorities;

2961 (iv) the capital stock issued as a part of conversion is fairly and independently valued  
2962 and priced;

2963 (v) the capital stock is allocated and distributed fairly and without employment of  
2964 manipulative or deceptive devices;

2965 (vi) appropriate provision is made regarding fractional share interest and minimum  
2966 capital stock purchase requirements; and

2967 (vii) plans of conversion are adopted and implemented in such form and manner that  
2968 stability and continuity of management are encouraged and that the stability, safety, and  
2969 soundness of associations and other financial institutions are not impaired. In no event shall

2970 any rule or order issued by the commissioner regarding the conversion of an association make  
2971 it more difficult for an association subject to those rules or orders to implement conversion  
2972 than for an association subject only to federal laws and regulations.

2973 (e) A conversion proposed by a domestic association shall, after approval by the  
2974 commissioner, be submitted to the members or stockholders at an annual meeting or at a  
2975 special meeting called to consider that action. The conversion [~~must~~] shall have the approval  
2976 of a majority of the total votes eligible to be cast by members or stockholders at the meeting.  
2977 Notice shall be given of any meeting at which a conversion is to be considered. The notice  
2978 shall expressly state that a proposed conversion will be submitted for approval or disapproval,  
2979 include a full and accurate description of the plan of conversion and all other matters to be  
2980 brought before the meeting, state that a proxy for the meeting given previously is revocable,  
2981 and state the time, date, and place of the meeting. The notice shall be mailed at least 20 days  
2982 prior to the date of the meeting to each voting member or stockholder of the converting  
2983 association addressed to his address shown on the records of the association and to the  
2984 supervisor or commissioner.

2985 (f) If the commissioner finds that a conversion proceeding has been completed in  
2986 accordance with the requirements of this section and any other applicable law and rules, he  
2987 shall issue to the applicant a certificate of conversion, attaching as a part of the certificate a  
2988 copy of the charter, articles of incorporation, articles of association, or similar instrument. The  
2989 commissioner shall also cause the same to be filed with the Division of Corporations and  
2990 Commercial Code.

2991 (2) Any state mutual or state capital stock association eligible under federal law or  
2992 regulations to become a federal association may convert to a federal association by following  
2993 the procedure outlined in this Subsection (2).

2994 (a) At any regular meeting or at any special meeting of the members or stockholders of  
2995 the association called to consider the action and held in accordance with the laws governing  
2996 the association, the members or stockholders by majority vote of those present or voting by  
2997 proxy may declare by resolution the determination to convert the association into a federal

2998 association.

2999 (b) A copy of the minutes of the meeting of the members or shareholders verified by  
3000 the affidavit of the president or vice president and the secretary of the meeting shall be, within  
3001 10 days after the meeting, filed with the commissioner. This verified copy of the minutes of  
3002 the meeting, when so filed, shall be presumptive evidence of the holding of the meeting and of  
3003 the action there taken by the members or stockholders.

3004 (c) Within a reasonable time and without any unnecessary delay after the adjournment  
3005 of the meeting of shareholders, the association shall take such action as may be necessary  
3006 under requirements of the Office of Thrift Supervision or other federal agency to make it a  
3007 federal association, and within 10 days after receipt of the federal charter there shall be filed  
3008 with the commissioner a copy of the charter or a certificate showing the organization of the  
3009 association as a federal association, certified by or on behalf of the Office of Thrift  
3010 Supervision or other federal agency. Upon the filing of these instruments the association shall  
3011 cease to be a state association and shall thereafter be a federal association.

3012 (d) Upon completion of a conversion to a federal association, the corporate existence  
3013 of the converting association [~~shall not~~] does not terminate, but the association shall be a  
3014 continuation of the entity so converted. All property of the converting association, including  
3015 its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or  
3016 mixed, things in action, and every right, privilege, interest, and asset of any conceivable value  
3017 or benefit then existing, or pertaining to it, or which would inure to it, immediately, by  
3018 operation of law and without any conveyance or transfer and without any further act or deed,  
3019 shall vest in and remain the property of the converted association, and the same shall have,  
3020 hold, and enjoy that property in its own right as fully and to the same extent as that property  
3021 was possessed, held, and enjoyed by the converting association, and the converted association  
3022 shall continue to have and succeed to all the rights, obligations, and relations of the converting  
3023 association. All pending actions and other judicial proceedings to which the converting  
3024 association is a party [~~shall not be~~] are not abated or discontinued by reason of the conversion,  
3025 but may be prosecuted to final judgment, order, or decree in the same manner as if the

3026 conversion had not been made, and the converted association may continue the actions in its  
3027 new corporate name. Any judgment, order, or decree may be rendered for or against it which  
3028 might have been rendered for or against the converting association before the conversion  
3029 involved in the proceedings.

3030 (e) Upon the completion of a conversion to a federal association, the converted  
3031 association shall cease to be supervised by the commissioner or by this state except as a  
3032 federal association.

3033 Section 85. Section **7-7-14** is amended to read:

3034 **7-7-14. Bonding of directors, officers, employees, and collection agents.**

3035 Each director, officer, and employee of an association shall, before entering upon the  
3036 performance of any duty, execute an individual bond with adequate corporate surety payable  
3037 to the association as an indemnity for any loss the association may sustain of money or other  
3038 property by or through any fraud, dishonesty, forgery or alteration, larceny, theft,  
3039 embezzlement, robbery, burglary, hold-up, wrongful or unlawful abstraction, misapplication,  
3040 misplacement, destruction or misappropriation, or any other dishonest or criminal act or  
3041 omission by the director, officer, employee, or agent. An association which employs  
3042 collection agents, who for any reason are not covered by a bond as hereinabove required, shall  
3043 provide for the bonding of each such agent in an amount equal to at least twice the average  
3044 monthly collection of the agent. No bond coverage will be required of any agent which is a  
3045 financial institution insured by the Federal Deposit Insurance Corporation or other federal  
3046 deposit insurance agency. In lieu of individual bonds, a blanket bond, protecting the  
3047 association from loss through any such act or acts on the part of any such director, officer, or  
3048 employee, may be obtained. A true copy of every such indemnity bond shall be on file at all  
3049 times with the supervisor. Each bond shall provide that a cancellation of the bond either by  
3050 the surety or by the insured [~~shall not~~] does not become effective unless and until 10 days  
3051 notice in writing first has been given to the supervisor, unless he has approved the cancellation  
3052 earlier.

3053 Section 86. Section **7-7-15** is amended to read:

3054           **7-7-15. Fiduciary relationship of directors and officers to association --**  
3055 **Disclosure requirements -- Prohibitions -- Violations as misdemeanors.**

3056           (1) (a) Directors and officers occupy fiduciary relationships to the association of  
3057 which they are directors or officers. No director or officer may engage or participate, directly  
3058 or indirectly, in any business or transaction conducted on behalf of or involving the  
3059 association, which would result in a conflict of his own personal interests with those of the  
3060 association which he serves, unless:

3061                   (i) the business or transactions are conducted in good faith and are honest, fair, and  
3062 reasonable to the association;

3063                   (ii) a full disclosure of the business or transactions and the nature of the director's or  
3064 officer's interest is made to the board of directors;

3065                   (iii) the business or transactions are approved in good faith by the board of directors,  
3066 any interested director abstaining; and

3067                   (iv) the business or transactions do not represent a breach of the officer's or director's  
3068 fiduciary duty and are not fraudulent, illegal, or ultra vires.

3069           (b) Without limitation by any of the specific provisions of this section, the supervisor  
3070 may require the disclosure by directors, officers and employees of their personal interest, direct  
3071 or indirect, in any business or transaction on behalf of or involving the association and of their  
3072 control of or active participation in enterprises having activities related to the business of the  
3073 association.

3074           (2) The following express restrictions governing the conduct of directors and officers  
3075 of associations shall apply, but [~~shall not~~] may not be construed in any manner as excusing  
3076 those persons from the observance of any other aspect of the general fiduciary duty owed by  
3077 them to the association which they serve:

3078                   (a) No officer or director of an association may, without the prior written approval of  
3079 the commissioner, serve as a director or officer of another savings institution, the principal  
3080 office of which is located in the same community as an office of the association, unless he  
3081 served as director or officer of both institutions before the effective date of this act.

3082 (b) A director may not receive remuneration as a director, except reasonable fees for  
3083 service as a director or for service as a member of a committee of directors. This subsection  
3084 does not prohibit or in any way limit any right of a director who is also an officer, employee,  
3085 or attorney for the association to receive compensation for service as an officer, employee, or  
3086 attorney.

3087 (c) No director or officer may have any interest, directly or indirectly, in the proceeds  
3088 of a loan or investment or of a purchase or sale made by the association, unless the loan,  
3089 investment, purchase, or sale is authorized expressly by resolution of the board of directors,  
3090 and unless the resolution is approved by vote of at least two-thirds of the directors authorized  
3091 of the association, any interested director taking no part in the vote.

3092 (d) No director or officer may have any interest, direct or indirect, in the purchase at  
3093 less than its face value of any evidence of a savings account, deposit or other indebtedness  
3094 issued by the association.

3095 (e) An association or a director, officer, or employee of an association may not require,  
3096 as a condition to the granting of any loan or the extension of any other service by the  
3097 association, that the borrower or any other person undertake a contract of insurance or any  
3098 other agreement or understanding with respect to the furnishing of any other goods or services,  
3099 with any specific company, agency, or individual.

3100 (f) No officer or director acting as proxy for a member or stockholder of an association  
3101 may exercise, transfer, or delegate the proxy vote or votes in consideration of a private benefit  
3102 or advantage, direct or indirect, accruing to himself, nor may he surrender control or pass his  
3103 office to any other for any consideration of a private benefit or advantage, direct or indirect.  
3104 The voting rights of members and directors may not be the subject of sale, barter, exchange, or  
3105 similar transaction, either directly or indirectly. Any officer or director who violates this  
3106 subsection shall be held accountable to the association for any increment.

3107 (g) No director or officer may solicit, accept, or agree to accept, directly or indirectly,  
3108 from any person other than the association any gratuity, compensation or other personal  
3109 benefit for any action taken by the association or for endeavoring to procure any such action.

3110 (h) Any person violating any of the specific prohibitions set forth in Subsections (a)  
3111 through (g) is guilty of a class C misdemeanor.

3112 Section 87. Section **7-7-17** is amended to read:

3113 **7-7-17. Indemnification of directors, officers, and employees.**

3114 A person who is made a party in or threatened by any action, suit or proceeding,  
3115 judicial or administrative, civil or criminal, by reason of his or her being or having been a  
3116 director, officer or employee of an association shall be indemnified or reimbursed by the  
3117 association for reasonable expenses, including [~~but not limited to attorney's~~] attorney fees,  
3118 actually incurred by him or her in connection with that action, suit or proceeding, instituted or  
3119 threatened, except that no person need be so indemnified or reimbursed, and a person may be  
3120 required to return any advancement or allowance for indemnification which may have been  
3121 made by the association in advance of final disposition, in relation to such an action, suit or  
3122 proceeding in which and to the extent that he finally is adjudicated to have been guilty of a  
3123 breach of good faith, to have been negligent in the performance of his duties or to have  
3124 committed an action or failed to perform a duty for which there is a common law or a statutory  
3125 liability; though a person may be indemnified or reimbursed for: (1) amounts paid in  
3126 compromise or settlement of any action, suit or proceeding, including reasonable expenses  
3127 incurred in connection therewith, or (2) reasonable expenses including fines and penalties,  
3128 incurred in connection with a criminal or civil action, suit or proceeding in which the person  
3129 has been adjudicated guilty, negligent or liable, if it is determined by the board of directors  
3130 that the person was acting in good faith and in what he believed to be the best interests of the  
3131 association and without knowledge that the action was illegal, and if the indemnification or  
3132 reimbursement is approved at an annual or special meeting of the members or stockholders by  
3133 a majority of the votes eligible to be cast. Amounts paid to the association, whether pursuant  
3134 to judgment or settlement, by any person within the meaning of this section [~~shall not~~] may  
3135 not be indemnified or reimbursed in any case.

3136 Section 88. Section **7-7-19** is amended to read:

3137 **7-7-19. Record and accounting requirements -- Valuation of assets.**

3138 (1) Every association shall keep at the home office correct and complete books of  
3139 accounts, membership or stockholder records, and minutes of the proceedings of members,  
3140 stockholders, and directors. Complete records of all business transacted at the home office  
3141 shall be maintained at the home office. Control records of all business transacted at each  
3142 branch office or agency shall be maintained at the home office.

3143 (2) Each branch office shall keep detailed records of all transactions at that branch  
3144 office and shall furnish full control records to the home office.

3145 (3) Each agent of an association shall prepare an original record of each business  
3146 transaction of the association conducted by the agent and shall report promptly to the home  
3147 office. Complete detailed permanent records of the transactions are not required to be  
3148 maintained at the agency, but may be maintained at a branch or home office of the association.

3149 (4) Every association shall close its books at the close of business at least annually or  
3150 more often if required for all associations by the commissioner.

3151 (5) No association by any system of accounting or any device of bookkeeping shall,  
3152 either directly or indirectly, enter any of its assets upon its books in the name of any other  
3153 person, partnership, association, or corporation or under any title or designation that is not  
3154 fairly descriptive of the assets.

3155 (6) The commissioner, after a determination of value made in accordance with this  
3156 chapter, may order that assets, individually or in the aggregate, to the extent that the assets are  
3157 overvalued on an association's books, be charged off, or that a special reserve or reserves equal  
3158 to the overvaluation be set up by transfers from undivided profits or reserves.

3159 (7) An association [~~shall not~~] may not carry any real estate on its books at a sum in  
3160 excess of the total amount invested by the association on account of that real estate, including  
3161 advances, costs, and improvements but excluding accrued but uncollected interest.

3162 (8) Every association shall have appraised each parcel of real estate acquired at the  
3163 time of acquisition. The report of each such appraisal shall be submitted in writing to the  
3164 board of directors and shall be kept in the records of the association.

3165 (9) Every association shall maintain complete loan and investment records in a

3166 manner satisfactory to the commissioner. Each record of a real estate loan or other secured  
3167 loan or investment shall contain documentation to the satisfaction of the commissioner of the  
3168 type, adequacy and complexion of the security.

3169 (10) Every mutual association shall maintain membership records, which shall show  
3170 the name and address of the members, the status of each member as a savings account holder,  
3171 or an obligor, or a savings account holder and obligor, and the date membership began. In the  
3172 case of a member holding a savings account, the association shall obtain a savings account  
3173 contract, which may be a signature card, containing the signature of each holder of the account  
3174 or his duly authorized representative, and shall preserve the contract in the records of the  
3175 association.

3176 (11) Every capital stock association shall maintain a register of investors and stock  
3177 transfers which shows the name and address of the stockholder, the type of stock and voting  
3178 status of the stockholder, and the date each share of stock was acquired.

3179 (12) Every association shall use such forms and keep such records, including without  
3180 limitation, those of its members or stockholders, as the commissioner may from time to time  
3181 require.

3182 Section 89. Section **7-7-21** is amended to read:

3183 **7-7-21. Powers of associations.**

3184 (1) Every association incorporated or operating under the provisions of this chapter  
3185 shall have all the powers enumerated, authorized, and permitted by this chapter and such other  
3186 rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate  
3187 for the accomplishment of the objects and purposes of the association.

3188 (2) Among others, and except as otherwise limited by the provisions of this chapter,  
3189 every association shall have the following powers:

3190 (a) to have perpetual existence, to adopt and use a corporate seal, which may be  
3191 affixed by imprint, facsimile, or otherwise; and to adopt and amend bylaws as provided in this  
3192 chapter;

3193 (b) to sue, be sued, complain, and defend in any court;

3194 (c) (i) to acquire, hold, sell, dispose of, and convey real and personal estate consistent  
3195 with the association's objects and powers;

3196 (ii) to mortgage, pledge, or lease any real or personal estate; and

3197 (iii) to take property by gift, devise, or bequest;

3198 (d) if and when an association is not a member of a federal home loan bank, to borrow  
3199 from sources, individual or corporate, in addition to its savings liability and other accounts,  
3200 not more than an aggregate amount equal to 25% of its assets on the date of borrowing. If and  
3201 when an association is a member of a federal home loan bank, to borrow from sources,  
3202 individual or corporate, in addition to its savings liability and other accounts, not more than an  
3203 aggregate amount equal to 60% of its assets on the date of borrowing or a greater amount  
3204 approved by the commissioner to insure parity between state chartered savings and loan  
3205 associations and federal associations. It is not a violation of this section if the borrowing  
3206 limits are exceeded because of a subsequent reduction in assets of an association. Any  
3207 association may borrow such additional sums as the commissioner may approve in writing.  
3208 All such loans and advances may be secured by property of the association, may be made with  
3209 convertible features, and may be evidenced by such notes, bonds, debentures, commercial  
3210 paper, bankers' acceptances, or other obligations or securities (except capital stock and capital  
3211 certificates) as may be generally authorized by the commissioner, except that no authorization  
3212 shall be required for securities guaranteed under Section 306(g) of the National Housing Act  
3213 of 1934;

3214 (e) to issue and sell, directly or through underwriters, capital certificates containing a  
3215 stated maturity date which represent nonwithdrawable capital contributions, and constitute  
3216 part of the reserves and net worth of the association. These certificates shall have no voting  
3217 rights, shall be subordinate to all savings accounts, debt obligations, and claims of creditors of  
3218 the association and shall constitute a claim in liquidation against any reserves, surplus, and  
3219 other net worth accounts remaining after the payment in full of all savings accounts, debt  
3220 obligations, and claims of creditors. The capital certificates shall be entitled to the payment of  
3221 earnings prior to the allocation of any income to surplus or other net worth accounts of the

3222 association and may be issued with a fixed rate of earnings or with a prior claim to distribution  
3223 of a specified percentage of any net income remaining after required allocations to reserves, or  
3224 a combination thereof. Losses shall be charged against capital certificates only after reserves,  
3225 surplus, and other net worth accounts have been exhausted;

3226 (f) (i) to appoint and remove such officers, agents, and employees as its business shall  
3227 require and to provide them suitable compensation;

3228 (ii) to enter into employment contracts not to exceed 10 years without the consent of  
3229 the supervisor;

3230 (iii) to provide for life, health, and casualty insurance for officers and employees;

3231 (iv) to adopt and operate reasonable bonus and incentive plans and retirement benefits  
3232 for those officers and employees; and

3233 (v) to provide for indemnification of its officers, employees, and directors as required  
3234 or permitted in this chapter, whether by insurance or otherwise;

3235 (g) to obtain and maintain insurance of its deposits by the Federal Deposit Insurance  
3236 Corporation or other federal deposit insurance agency;

3237 (h) to qualify as and become a member of any federal home loan bank;

3238 (i) (i) to act as fiscal agent of the United States, and, when so designated by the  
3239 Secretary of the Treasury, to perform, under such regulations as the Secretary of the Treasury  
3240 may prescribe, all such reasonable duties as fiscal agent of the United States as the Secretary  
3241 of the Treasury may require; and

3242 (ii) to act as agent for any instrumentality of the United States; and when so  
3243 designated by the state treasurer or other appropriate state officer, to act as agent of that state  
3244 or any instrumentality of that state;

3245 (j) to become a member of, deal with, maintain reserves or deposits with, or make  
3246 reasonable payments or contributions to any organization or instrumentality, government or  
3247 private, to the extent that the organization or instrumentality assists in furthering or facilitating  
3248 the association's purposes, powers, services, or community responsibilities, and to comply  
3249 with any reasonable requirements or conditions of eligibility;

3250 (k) to act as depository for receipt of payments of federal or state taxes and loan funds,  
3251 and satisfy any federal or state statutory or regulatory requirements in connection therewith,  
3252 including:

3253 (i) pledging of assets as collateral;

3254 (ii) payment of earnings at prescribed rates; and

3255 (iii) notwithstanding any other provision of this chapter, issuing the account subject to  
3256 rights of immediate withdrawal;

3257 (l) to sell or assign any loan, including any participating interest therein, at any time;

3258 (m) to service loans and investments for others;

3259 (n) to act and receive compensation as trustee of any trust created or organized in the  
3260 United States and forming a part of a stock bonus, pension, or profit-sharing plan which  
3261 qualifies or qualified for specific tax treatment under Section 401 of the Internal Revenue  
3262 Code of 1986, and to act as trustee or custodian of an individual retirement account within the  
3263 meaning of Section 408 of that code. All funds held in fiduciary capacity by any such  
3264 association under the authority of this subsection may be commingled and consolidated for  
3265 appropriate purposes of investment, so long as records reflecting each separate beneficial  
3266 interest are maintained by the fiduciary, unless that responsibility is lawfully assumed by  
3267 another appropriate party;

3268 (o) to act as assignee, agent, receiver, trustee, executor, administrator, conservator,  
3269 guardian, custodian, personal representative, or in any other fiduciary capacity, and to execute  
3270 trusts of every description not inconsistent with law, and to receive reasonable compensation  
3271 therefor. An association exercising trust or other fiduciary powers under this subsection shall  
3272 have all powers, privileges, and immunities granted in Chapter 5. Funds held by an  
3273 association as fiduciary under this subsection may be commingled and consolidated for  
3274 appropriate purposes of investment, provided that records reflecting the separate interest of  
3275 each beneficiary shall be maintained by the fiduciary, unless that responsibility is lawfully  
3276 assumed by another appropriate party. Trust funds available for investment shall be invested  
3277 at the time and in the manner specified by the agreement, instrument, or order creating or

3278 defining the fiduciary estate, but may be invested in savings accounts of the associations,  
3279 unless the instrument, agreement, or order prohibits such investment;

3280 (p) subject to Chapter 16a, Automated Teller Machine Act, to engage in financial  
3281 transactions effected by electronic means;

3282 (q) to maintain and let safes, boxes, or other receptacles or premises for the  
3283 safekeeping of personal property upon such terms and conditions as may be agreed upon;

3284 (r) to offer money orders, travel checks, and similar instruments for its own account or  
3285 as agent for any organization empowered to sell such instruments through agents within this  
3286 state;

3287 (s) to act as agent or escrowee for others;

3288 (t) to declare and pay dividends on capital stock in cash or property out of the  
3289 unreserved and unrestricted earned surplus of the association, or in its own shares, from time  
3290 to time, except when there is a deficiency in the reserves or net worth of the association under  
3291 rules issued by the commissioner under Section 7-7-20, and except when the association is in  
3292 an impaired condition or when the payment thereof would cause the association to be in an  
3293 impaired condition. A split-up or division of the issued shares of capital stock into a greater  
3294 number of shares without increasing the stated capital of the association is authorized, and  
3295 ~~[shall not]~~ may not be construed to be a dividend within the meaning of this section;

3296 (u) to acquire deposits from any individual or entity and pay earnings thereon, to offer  
3297 interest bearing or noninterest bearing accounts from which withdrawals may be made by  
3298 negotiable or transferable instruments for the purpose of making transfers to third parties, and  
3299 to lend, and commit to lend, extend credit, and invest its funds as provided for in this chapter;  
3300 and

3301 (v) to engage in other activities, exercise other powers and to enjoy other rights,  
3302 privileges, benefits, and immunities authorized by rules of the commissioner and, particularly,  
3303 under the authority given to the commissioner in Subsection 7-1-301(3), which authority shall  
3304 be exercised to prevent competitive disparities between associations chartered in this state and  
3305 federal associations.

3306 Section 90. Section **7-7-26** is amended to read:

3307 **7-7-26. Redemption of savings accounts.**

3308 At any time funds are on hand for the purpose, the association may redeem by lot or  
3309 otherwise, as the board of directors may determine, all or any part of any of its savings  
3310 accounts on an earnings date by giving 30 days' notice by registered or certified mail  
3311 addressed to each affected account holder at his last address as recorded on the books of the  
3312 association. No association shall redeem any of its savings accounts when the association is in  
3313 an impaired condition or when it has applications for withdrawal which have been on file  
3314 more than 14 days and have not been paid. The redemption price of savings accounts  
3315 redeemed shall be the full value of the account redeemed, as determined by the board of  
3316 directors, but in no event shall the redemption price be less than the withdrawal value. If the  
3317 notice of redemption has been duly given and if on or before the redemption date the funds  
3318 necessary for redemption have been set aside so as to be and continue to be available for  
3319 redemption, earnings upon the accounts called for redemption shall cease to accrue from and  
3320 after the earnings date specified as the redemption date, and all rights with respect to these  
3321 accounts shall forthwith, after the redemption date, terminate, excepting only any right of the  
3322 account holder of record to receive the redemption price without interest. All savings account  
3323 books or certificates evidencing former savings accounts which have been validly called for  
3324 redemption [~~must~~] shall be tendered for payment within seven years from the date of  
3325 redemption designated in the redemption notice, otherwise they shall be cancelled and the  
3326 funds set aside for those accounts presumed abandoned, and they shall be disposed of in  
3327 accordance with the provisions of Title 67, Chapter 4a, Unclaimed Property Act.

3328 Section 91. Section **7-7-29** is amended to read:

3329 **7-7-29. Investment in service organizations, business development credit**  
3330 **corporations, and service corporations.**

3331 (1) An association may invest:

3332 (a) in capital stock, obligations, or other securities of service organizations, and of  
3333 business development credit corporations incorporated in this state, provided that the

3334 aggregate of those investments [~~shall not~~] may not exceed 10% of its assets; or

3335 (b) in capital stock, obligations, or other securities of any service corporation, provided  
3336 that the aggregate of those investments [~~shall not~~] may not exceed 10% of its assets.

3337 (2) The commissioner may, by regulation, allow investments in excess of those  
3338 permitted by this section, if he finds that such investments promote the viability and stability  
3339 of the associations of this state.

3340 Section 92. Section **7-7-30** is amended to read:

3341 **7-7-30. Investment in property used in conduct of business -- Investment in**  
3342 **manner not prohibited by law.**

3343 (1) An association may invest in such real property or interest therein as the directors  
3344 may deem necessary or convenient for the conduct of the business of the association, which  
3345 for the purposes of this chapter may include the stock of a wholly owned subsidiary  
3346 corporation having as its exclusive activity the ownership and management of such property or  
3347 interests, but the amount so invested [~~shall not~~] may not exceed 10% of the assets of the  
3348 association, except that the commissioner may authorize a greater amount to be so invested if  
3349 he finds that the investments promote the viability and stability of the associations of this  
3350 state. An association may invest a reasonable amount in property such as furniture, fixtures,  
3351 and equipment for use in carrying on its own business.

3352 (2) Every association may invest its assets in a manner not expressly prohibited by law  
3353 if the investments are made in the exercise of the judgment and care under the circumstances  
3354 then prevailing which men of prudence, discretion, and intelligence exercise in the  
3355 management of their own affairs not in regard to speculation but in regard to the permanent  
3356 disposition of their funds, considering the probable income as well as the probable safety of  
3357 their capital. The aggregate of investments held under this subsection and not permitted by any  
3358 other section of this chapter may not exceed 5% of the assets of the association.

3359 Section 93. Section **7-7-32** is amended to read:

3360 **7-7-32. Agreements committing assets to lines of credit -- Stock ownership or**  
3361 **affiliation with credit card companies.**

3362 An association may, subject to Section 7-7-33, commit its assets to lines of credit  
3363 under credit agreements and credit card agreements with its credit card holders and with other  
3364 credit card issuers, and pay and agree to pay obligations incurred in connection with those  
3365 agreements, and become a member or stockholder of, or become otherwise affiliated with, any  
3366 credit card corporation, association, or other issuer. The commissioner may, by rule, limit the  
3367 percentage of assets that may be invested in such lines of credit, but the limitation [~~shall not~~  
3368 may not be more restrictive than that of the Office of Thrift Supervision or successor federal  
3369 agency for federally chartered associations.

3370 Section 94. Section **7-7-33** is amended to read:

3371 **7-7-33. Investments in loans -- Payments to protect real estate loans -- Requiring**  
3372 **borrower to pay taxes, insurance, and other charges on real estate in advance.**

3373 (1) An association may invest in or otherwise acquire loans and interests in loans,  
3374 secured or unsecured, of any type, amount, and for any purpose, including[~~, but not limited~~  
3375 ~~to~~]:

3376 (a) loans evidenced by a participation certificate, mortgage-backed bond or note, or  
3377 mortgage pass-through certificate;

3378 (b) personal loans evidenced by promissory notes;

3379 (c) loans containing variable, renegotiable, graduated payment, shared appreciation, or  
3380 other alternative payment features or any combinations of those features;

3381 (d) loans secured by the pledge of policies of life insurance;

3382 (e) loans which are callable upon transfer of the security therefor;

3383 (f) loans to financial institutions, brokers and dealers, secured by loans, obligations or  
3384 investments in which the association could invest directly or unsecured loans to subsidiary  
3385 corporations whether or not those corporations are controlled by the association;

3386 (g) loans for the payment of expenses of college or applied technology education;

3387 (h) loans on the security of its savings accounts and loans specifically related to  
3388 negotiable order-of-withdrawal accounts;

3389 (i) loans secured by deeds of trust, mortgages or real estate contracts on interests in

3390 real property whether for the acquisition or improvement of homes or of real property or for  
3391 other purposes, subject only to the conditions specified in Subsections (2) and (3); and

3392 (j) commercial loans to partnerships, corporations, or trusts which are operated for  
3393 profit.

3394 (2) No association shall make a loan to one person if the sum of (a) the amount of the  
3395 loan and (b) the total balance of all outstanding loans owed to the association and its service  
3396 corporation subsidiaries by that person exceeds an amount equal to 15% of the association's  
3397 equity capital.

3398 (3) No association shall make any loan authorized by this section unless it first has  
3399 determined that the type, amount, purpose, and repayment provisions of the loan in relation to  
3400 the borrower's resources and credit standing support the reasonable belief that the loan will be  
3401 financially sound and will be repaid according to its terms, and that the loan is not otherwise  
3402 unlawful.

3403 (4) (a) An association may pay taxes, assessments, ground rents, insurance premiums,  
3404 and other similar charges for the protection of its real estate loans.

3405 (b) All such payments shall be added to the unpaid balance of the loan and shall be  
3406 equally secured by the first lien on the property as the original amounts advanced.

3407 (c) An association may require life insurance to be assigned as additional collateral  
3408 upon any real estate loan, and if it does so require, the association shall obtain a first lien upon  
3409 the policy and may advance premiums thereon, and the premium advances shall be added to  
3410 the unpaid balance of the loan and shall be equally secured by the first lien on the property as  
3411 the original amount advanced.

3412 (5) (a) An association may require, subject to the provisions of the Interest on  
3413 Mortgage Loan Reserve Accounts Act, Sections 7-17-1 through 7-17-10, that a borrower pay  
3414 monthly in advance, in addition to interest or interest and principal payments, the equivalent  
3415 of 1/12 of the estimated annual taxes, assessments, insurance premiums, ground rents, and  
3416 other charges upon the real estate securing a loan, or any of those charges, so as to enable the  
3417 association to pay the charges as they become due from the funds so received.

3418 (b) The amount of the monthly payments may be increased or decreased to provide  
3419 reasonably for the payment of the estimated annual taxes, assessments, insurance premiums,  
3420 and other charges.

3421 (c) If the association advances its own funds for the purposes stated, that amount shall  
3422 be secured by the association's mortgage or trust deed, if any, with the same priority as the  
3423 original amount advanced under the mortgage or trust deed.

3424 Section 95. Section **7-7-43** is amended to read:

3425 **7-7-43. Previously incorporated associations.**

3426 (1) The name, rights, powers, privileges, and immunities of every association  
3427 incorporated in this state before the effective date of this act shall be governed, controlled,  
3428 construed, extended, limited, and determined by the provisions of this chapter to the same  
3429 extent and effect as if the association had been incorporated under this chapter. The articles of  
3430 incorporation, certificate of incorporation, or charter, however entitled, bylaws and  
3431 constitution, or other rules of every such association made or existing before the effective date  
3432 of this act are hereby modified, altered, and amended to conform to the provisions of this  
3433 chapter, with or without the issuance or approval by the commissioner of conformed copies of  
3434 such documents, and are declared void to the extent that they are inconsistent with the  
3435 provisions of this chapter; except, that the obligations of any such pre-existing association,  
3436 whether between the association and its members or stockholders, or any of them, or any other  
3437 person or persons, and any valid contracts between the members or stockholders of any such  
3438 association, or between the association and any other person or persons, existing at the time  
3439 this act takes effect, [~~shall not~~] may not in any way be impaired by the provisions of this  
3440 chapter. With these exceptions, every association incorporated before the effective date of this  
3441 act shall possess the rights, powers, privileges, and immunities and shall be subject to the  
3442 duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter  
3443 notwithstanding anything to the contrary in its certificate of authority, certificate of  
3444 incorporation, bylaws, constitution, or rules.

3445 (2) All obligations to any association incorporated before the effective date of this act

3446 contracted before the effective date of this act shall be enforceable by it and in its name, and  
3447 demands, claims, and rights of action against the association may be enforced against it as  
3448 fully and completely as they could have been enforced in the absence of this chapter.

3449 Section 96. Section **7-9-5** is amended to read:

3450 **7-9-5. Powers of credit unions.**

3451 In addition to the powers specified elsewhere in this chapter and subject to any  
3452 limitations specified elsewhere in this chapter, a credit union may:

3453 (1) make contracts;

3454 (2) sue and be sued;

3455 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and  
3456 equipment as the directors consider necessary or incidental to the operation and business of  
3457 the credit union, but the value of the real property may not exceed 7% of credit union assets,  
3458 unless approved by the commissioner;

3459 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either  
3460 in whole or in part, necessary or incidental to its operation;

3461 (5) incur and pay necessary and incidental operating expenses;

3462 (6) require an entrance or membership fee;

3463 (7) receive the funds of its members in payment for:

3464 (a) shares;

3465 (b) share certificates;

3466 (c) deposits;

3467 (d) deposit certificates;

3468 (e) share drafts;

3469 (f) NOW accounts; and

3470 (g) other instruments;

3471 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third  
3472 party with prior authorization in writing, including ~~[, but not limited to,]~~ drafts drawn on the  
3473 credit union for payment to the member or any third party, in accordance with the procedures

3474 established by the board of directors, including~~[- but not limited to,]~~ drafts, third-party  
3475 instruments, and other transaction instruments, as provided in the bylaws;

3476 (9) charge fees for its services;

3477 (10) extend credit to its members, at rates established in accordance with the bylaws or  
3478 by the board of directors;

3479 (11) extend credit secured by real estate;

3480 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan  
3481 participation arrangements, in accordance with written policies of the board of directors with  
3482 one or more:

3483 (i) other credit unions;

3484 (ii) credit union service organizations; or

3485 (iii) other financial organizations; and

3486 (b) make co-lending arrangements, including loan participation arrangements, in  
3487 accordance with Subsection (12)(a) subject to the following:

3488 (i) the credit union or credit union service organization that originates a loan for which  
3489 co-lending arrangements are made shall retain an interest of at least 10% of the loan;

3490 (ii) on or after May 5, 2003, the originating credit union or credit union service  
3491 organization may sell to a credit union an interest in a co-lending arrangement that involves a  
3492 member-business loan only if the person receiving the member-business loan is a member of  
3493 the credit union to which the interest is sold;

3494 (iii) on or after May 5, 2003, the originating credit union or credit union service  
3495 organization may sell to a credit union service organization an interest in a co-lending  
3496 arrangement that involves a member-business loan only if the person receiving the  
3497 member-business loan is a member of a credit union that holds an interest in the credit union  
3498 service organization to which the interest is sold; and

3499 (iv) a nonexempt credit union may not originate, participate in, or obtain any interest  
3500 in a co-lending arrangement, including a loan participation arrangement, in violation of  
3501 Section 7-9-58;

- 3502           (13) sell and pledge eligible obligations in accordance with written policies of the  
3503 board of directors;
- 3504           (14) engage in activities and programs of the federal government or this state or any  
3505 agency or political subdivision of the state, when approved by the board of directors and not  
3506 inconsistent with this chapter;
- 3507           (15) act as fiscal agent for and receive payments on shares and deposits from the  
3508 federal government, this state, or its agencies or political subdivisions not inconsistent with the  
3509 laws of this state;
- 3510           (16) borrow money and issue evidence of indebtedness for a loan or loans for  
3511 temporary purposes in the usual course of its operations;
- 3512           (17) discount and sell notes and obligations;
- 3513           (18) sell all or any portion of its assets to another credit union or purchase all or any  
3514 portion of the assets of another credit union;
- 3515           (19) invest funds as provided in this title and in its bylaws;
- 3516           (20) maintain deposits in insured depository institutions as provided in this title and in  
3517 its bylaws;
- 3518           (21) (a) hold membership in corporate credit unions organized under this chapter or  
3519 under other state or federal statutes; and
- 3520               (b) hold membership or equity interest in associations and organizations of credit  
3521 unions, including credit union service organizations;
- 3522           (22) declare and pay dividends on shares, contract for and pay interest on deposits,  
3523 and pay refunds of interest on loans as provided in this title and in its bylaws;
- 3524           (23) collect, receive, and disburse funds in connection with the sale of negotiable or  
3525 nonnegotiable instruments and for other purposes that provide benefits or convenience to its  
3526 members, as provided in this title and in its bylaws;
- 3527           (24) make donations for the members' welfare or for civic, charitable, scientific, or  
3528 educational purposes as authorized by the board of directors or provided in its bylaws;
- 3529           (25) act as trustee of funds permitted by federal law to be deposited in a credit union

3530 as a deferred compensation or tax deferred device, including~~[, but not limited to,]~~ individual  
3531 retirement accounts as defined by Section 408, Internal Revenue Code;

3532 (26) purchase reasonable accident and health insurance, including accidental death  
3533 benefits, for directors and committee members through insurance companies licensed in this  
3534 state as provided in its bylaws;

3535 (27) provide reasonable protection through insurance or other means to protect board  
3536 members, committee members, and employees from liability arising out of consumer  
3537 legislation [~~such as, but not limited to,~~] including truth-in-lending and equal credit laws and as  
3538 provided in its bylaws;

3539 (28) reimburse directors and committee members for reasonable and necessary  
3540 expenses incurred in the performance of their duties;

3541 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of  
3542 credit unions or credit union members by automated or electronic means and hold membership  
3543 in entities established to promote and effectuate these systems, if:

3544 (a) the participation is not inconsistent with the law and rules of the department; and

3545 (b) any credit union participating in any system notifies the department as provided by  
3546 law;

3547 (30) issue credit cards and debit cards to allow members to obtain access to their  
3548 shares, deposits, and extensions of credit;

3549 (31) provide any act necessary to obtain and maintain membership in the credit union;

3550 (32) exercise incidental powers necessary to carry out the purpose for which a credit  
3551 union is organized;

3552 (33) undertake other activities relating to its purpose as its bylaws may provide;

3553 (34) engage in other activities, exercise other powers, and enjoy other rights,  
3554 privileges, benefits, and immunities authorized by rules of the commissioner;

3555 (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement  
3556 accounts, credit union employee pension plans, and other employee benefit programs; and

3557 (36) advertise to the general public the products and services offered by the credit

3558 union if the advertisement prominently discloses that to use the products or services of the  
3559 credit union a person is required to:

3560 (a) be eligible for membership in the credit union; and

3561 (b) become a member of the credit union.

3562 Section 97. Section **7-9-19** is amended to read:

3563 **7-9-19. Payments to expelled members -- Liability of member not relieved by**  
3564 **expulsion.**

3565 (1) Except in the case of liquidation or dissolution, the amount paid in on shares or  
3566 deposited by members who have been expelled shall be paid to them with all accrued interest,  
3567 in the order of expulsion.

3568 (2) Payment shall be made only as funds become available.

3569 (3) All amounts due the credit union by the expelled member shall be deducted by the  
3570 credit union before any amounts are paid to the expelled member.

3571 (4) Expulsion [~~shall not~~] does not relieve a member from any liability to the credit  
3572 union.

3573 Section 98. Section **7-9-32** is amended to read:

3574 **7-9-32. Joint accounts -- Accounts providing for payment to designated person**  
3575 **on death of owner or owners.**

3576 (1) If a deposit or share account is opened in any credit union in the name of two or  
3577 more persons, whether minor or adult, in such form that the money in the account is payable to  
3578 the survivor or survivors, the account and all additions to it are considered held by these  
3579 persons as joint tenants or owners.

3580 (2) The money in a joint account may be paid to or on the receipt or withdrawal order  
3581 of any one of the joint owners during their lifetimes or to or on receipt of withdrawal order of  
3582 any one of the survivors of them after the death of any one or more of them upon presentation  
3583 of the pass or account book or other evidence of ownership as required by the bylaws of the  
3584 credit union. The opening of the account in such form shall, in the absence of fraud, undue  
3585 influence, or legal proof of other intent, be conclusive evidence in any action or proceedings

3586 concerning said account of the intention of the parties to the account to vest title to such  
3587 account and the additions thereto in such survivor and survivors.

3588 (3) By written instructions given to the credit union by all parties to the account, the  
3589 signature of more than one of such persons during their lifetime or of more than one of the  
3590 survivors after the death of any one of them may be required on a receipt or withdrawal order,  
3591 in which case the credit union shall pay the moneys in the account only in accordance with  
3592 such instructions, but no such instructions shall limit the right of the survivor or survivors to  
3593 receive the money in the account.

3594 (4) Payment of all or part of the money in a joint account as provided in Subsections  
3595 (2) and (3) shall discharge the credit union from liability with respect to the money paid prior  
3596 to receipt by the credit union of a written notice from any one of the joint owners directing the  
3597 credit union not to permit withdrawals in accordance with the terms of the account or the  
3598 instructions. After receipt of such notice a credit union may refuse, without incurring liability,  
3599 to honor any receipt or withdrawal on the account pending determination of the rights of the  
3600 parties. No credit union paying any survivor shall be liable for any estate, inheritance, or  
3601 succession taxes.

3602 (5) The pledge to a credit union of all or part of a share account in joint tenancy or  
3603 ownership signed by that person or those persons who are authorized in writing to make  
3604 withdrawals from the account shall, unless the terms of the share account provide specifically  
3605 to the contrary, be a valid pledge and transfer to the credit union of that part of the account  
3606 pledged, and ~~shall not~~ does not operate to sever or terminate the joint and surviving  
3607 ownership quality of all or any part of the account.

3608 (6) Any credit union may issue share or deposit accounts in the name of one or more  
3609 persons with the provision that upon the death of the owner or owners thereof the proceeds  
3610 shall be the property of the person or persons designated by the owner or owners and shown by  
3611 the records of such credit union, but such proceeds shall be subject to the debts of the  
3612 decedent and the payment of Utah inheritance tax, if any. However, upon the receipt of  
3613 acquittance of the person so designated or six months having elapsed from the date of death

3614 and no claim on the account having been made for taxes, the credit union may make payment  
3615 to the persons designated by the deceased owner or owners and having done so is discharged  
3616 from further obligation and relieved from all further liability for payment made under this  
3617 subsection.

3618 Section 99. Section **7-14-5** is amended to read:

3619 **7-14-5. Reciprocal exchange of information authorized.**

3620 One or more financial institutions may jointly agree with one or more other financial  
3621 institutions for the reciprocal exchange of any information authorized to be reported by the  
3622 provisions of this chapter. Such reciprocal exchange of information or the acts or refusals to  
3623 act of one or more recipients because of such information [~~shall not~~] does not constitute a  
3624 boycott or blacklist, [~~or~~] and is not otherwise [~~be~~] a basis for liability to any person on the part  
3625 of any participant in the reciprocal exchange of information authorized by this chapter.

3626 Section 100. Section **7-17-4** is amended to read:

3627 **7-17-4. Options in lieu of reserve account -- Notice by lender -- Selection by**  
3628 **borrower -- Noninterest-bearing reserve account -- Exemption.**

3629 (1) A lender not requiring the establishment and maintenance of a reserve account shall  
3630 offer the borrower the following options:

3631 (a) the borrower may elect to maintain a noninterest-bearing reserve account to be  
3632 serviced by the lender at no charge to the borrower; or

3633 (b) the borrower may manage the payment of insurance premiums, taxes and other  
3634 charges for the borrower's own account.

3635 (2) (a) The lender shall give written notice of the options to the borrower:

3636 (i) with respect to real estate loans existing on July 1, 1979, by notice mailed not more  
3637 than 30 days after July 1, 1979; or

3638 (ii) with respect to real estate loans made on or after July 1, 1979, by notice given at or  
3639 prior to the closing of the loan.

3640 (b) The notice required by this Subsection (2) shall:

3641 (i) clearly describe the options; and

3642 (ii) state that:

3643 (A) a reserve account is not required by the lender;

3644 (B) the borrower is legally responsible for the payment of taxes, insurance premiums,  
3645 and other charges; and

3646 (C) the notice is being given pursuant to this chapter.

3647 (c) For real estate loans in existence on July 1, 1979, the borrower [~~must~~] shall select  
3648 one of the options prior to 60 days after July 1, 1979.

3649 (d) If no option is selected prior to 60 days after July 1, 1979, the borrower will be  
3650 considered to have selected the option described in Subsection (1)(a), provided, however, that  
3651 the borrower at a later time may select the option described in Subsection (1)(b).

3652 (e) For loans made on or after July 1, 1979, the borrower shall select one of the options  
3653 at the closing.

3654 (f) If the borrower selects the option described in Subsection (1)(a), the lender may not  
3655 be required to account for earnings, if any, on the account.

3656 (3) (a) Subject to Subsection (3)(b), if the borrower who selects the option described in  
3657 Subsection (1)(b), or the borrower's successors or assigns, fails to pay the taxes, insurance  
3658 premiums, or other charges pertaining to the property securing the loan prior to the  
3659 delinquency date for such payments, the lender may require a reserve account without interest  
3660 or other compensation for the use of the funds.

3661 (b) Notwithstanding Subsection (3)(a), the lender may not require a reserve account  
3662 without interest or other compensation if:

3663 (i) the borrower pays any delinquency within 30 days; and

3664 (ii) the borrower has not previously been delinquent in payment of taxes, insurance  
3665 premiums, or other charges.

3666 (4) This section does not apply to a loan made, renewed, or modified on or after May  
3667 6, 2002.

3668 Section 101. Section **7-17-6** is amended to read:

3669 **7-17-6. Liability of lender for failure to pay taxes, insurance premiums, or other**

3670 **charges.**

3671           A lender administering a reserve account shall make timely payments of taxes,  
3672 insurance premiums and other charges for which the account is established, if funds paid into  
3673 the account by the borrower, his successors or assigns, are sufficient for the payments.  
3674 Negligent failure to make the payments required for taxes, insurance premiums and other  
3675 charges as they become due, from available funds in the reserve account, shall subject the  
3676 lender to liability for all damages directly resulting from the failure; provided that this  
3677 sentence [~~shall not~~] does not deprive the lender of the right to present any defense it may have  
3678 in any action brought to enforce the liability. Failure of the borrower or his successors or  
3679 assigns to deliver promptly to the lender all notices of tax assessments and insurance  
3680 premiums or other charges, received by the borrower, his successors or assigns, shall relieve  
3681 the lender from liability under this section.

3682           Section 102. Section **7-17-8** is amended to read:

3683           **7-17-8. Damages for lender's violation of act -- Limitations on recovery.**

3684           (1) Except as otherwise provided in this act, a lender who violates this act is liable to  
3685 the borrower, his successors or assigns, for the actual damages suffered by the borrower, his  
3686 assigns or successors, or \$100, whichever is greater. If an action is commenced, the prevailing  
3687 party may be awarded reasonable attorney's fees as determined by the court.

3688           (2) A lender has no liability under this section if the court finds that written demand  
3689 for payment of the claim of the borrower, his successors or assigns, was made on the lender  
3690 not less than 30 days before commencement of the action and that the lender tendered to the  
3691 borrower, his successors or assigns, prior to the commencement of the action, an amount not  
3692 less than the damages awarded.

3693           (3) A lender may not be held liable under this section for a violation of this act if the  
3694 lender shows that the violation was not intentional and resulted from a bona fide error  
3695 notwithstanding the maintenance of procedures to avoid such errors.

3696           (4) A reserve account established or maintained in violation of this act is voidable, at  
3697 the option of the borrower, his successors or assigns, at any time, but [~~shall not~~] does not

3698 otherwise affect the validity of the loan, the security interest in the real property or any other  
3699 obligation of the borrower.

3700 (5) No action under this section may be brought more than one year after the date of  
3701 the violation.

3702 Section 103. Section **7-17-9** is amended to read:

3703 **7-17-9. Actions on accounts established prior to 1979 -- Limitations on recovery.**

3704 (1) With respect to any reserve account established prior to July 1, 1979 and for which  
3705 no legal action is pending as of January 1, 1979, no recovery shall be had in any action  
3706 brought to require payment of interest on, or other compensation for, the use prior to July 1,  
3707 1979, of the funds in such account unless:

3708 (a) An agreement in writing expressly so providing was executed by the borrower and  
3709 the lender; or

3710 (b) The borrower, or his successors or assigns, establishes by clear and convincing  
3711 evidence an agreement between the parties that the lender would pay interest on or to  
3712 otherwise compensate the borrower for the use of the funds in such account. Use in the loan  
3713 documents of such words as "trust" or "pledge" alone [~~shall not~~] does not establish the intent  
3714 of the parties; and

3715 (c) There is no federal law or regulation prohibiting the payment of interest on or  
3716 otherwise compensating the borrower for the use of the funds in such an account.

3717 (2) No action seeking payment of interest on or other compensation for the use of the  
3718 funds in any reserve account for any period prior to July 1, 1979, shall be brought after June  
3719 30, 1981. Any recovery in any such action shall be limited to the four-year period immediately  
3720 preceding the commencement of the action. No recovery shall be had in respect of any reserve  
3721 account established prior to July 1, 1979 greater than if the provisions of Section 7-17-3 of  
3722 this act were applicable to such accounts.

3723 (3) With respect to any reserve account established prior to July 1, 1979, an agreement  
3724 in writing between the lender and the borrower, or his successors or assigns, that (a) the  
3725 provisions of Section 7-17-3 of this act shall apply to all payments made subsequent to July 1,

3726 1979, or (b) the borrower may exercise, for the period subsequent to July 1, 1979, either of the  
3727 options provided in Section 7-17-4 of this act, shall bar any recovery by the borrower, his  
3728 successors or assigns, for interest on or other compensation for the use of the funds in such  
3729 account for any period prior to July 1, 1979.

3730 Section 104. Section **7-18a-301** is amended to read:

3731 **7-18a-301. Powers of an agency, branch, or representative office of a foreign**  
3732 **depository institution.**

3733 (1) Subject to the limitations set forth in Subsections (2) and (3), and notwithstanding  
3734 any other law of this state, a foreign depository institution authorized by this state to transact  
3735 business through an agency or branch shall transact business with the same rights, privileges,  
3736 and powers as a Utah depository institution and shall be subject to all the same duties,  
3737 restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws  
3738 of this state to a Utah depository institution.

3739 (2) The general rights, powers, and privileges of a foreign depository institution  
3740 authorized by this state to transact business through an agency or branch set forth in  
3741 Subsection (1) are limited to the following:

3742 (a) An agency may not accept any deposits from citizens or residents of the United  
3743 States, other than credit balances that are incidental to or arise out of its exercise of other  
3744 lawful powers, but it may accept deposits from persons who are neither citizens nor residents  
3745 of the United States.

3746 (b) An agency may pay checks or loan money.

3747 (c) A branch operating in this state may not accept from citizens or residents of the  
3748 United States deposits, other than credit balances that are incidental to or arise out of its  
3749 exercise of other lawful powers, of less than \$100,000.

3750 (d) An agency or branch [~~shall not be~~] is not required to maintain federal deposit  
3751 insurance.

3752 (e) After considering the applicable limitations on the retail deposit-taking powers and  
3753 privileges of an agency or branch of a foreign depository institution, the commissioner may,

3754 by rule or order, modify the applicability to an agency or branch, of any law of this state that is  
3755 generally applicable to insured depository institutions doing business in this state.

3756 (f) The commissioner may adopt such additional standards, conditions, or  
3757 requirements, or modify the applicability of any existing standards, conditions, or  
3758 requirements, by rule or order, as the commissioner may consider necessary to ensure the  
3759 safety and soundness and the protection of creditors of the operations of an agency or branch  
3760 of a foreign depository institution in this state.

3761 (3) A foreign depository institution authorized by this state to transact business  
3762 through a representative office may only:

3763 (a) engage in loan production office activities authorized by Section 7-1-715;

3764 (b) solicit new business;

3765 (c) conduct research; or

3766 (d) perform administrative functions expressly permitted by rule or order.

3767 Section 105. Section **8-3-1** is amended to read:

3768 **8-3-1. Plats of cemeteries shall be recorded.**

3769 The executive officers of organizations and all individual owners in control of  
3770 cemeteries, offering burial lots for sale in any county, shall file and cause to be recorded in the  
3771 office of the county recorder of the county within which such cemeteries are situated an  
3772 accurate plat thereof, which shall clearly show the sections of burial lots which have been  
3773 disposed of and the names of the persons owning or holding the same, and the sections of  
3774 burial lots held for disposal; and thereafter such executive officers or owners shall file  
3775 additional plats of any additions to such cemeteries before offering for sale any burial lots  
3776 therein. County recorders [~~shall not~~] may not collect any fees for filing and recording such  
3777 original plats.

3778 Section 106. Section **9-3-407** is amended to read:

3779 **9-3-407. Authority -- Powers.**

3780 (1) (a) The authority shall create, operate, and maintain a center that shall promote the  
3781 purposes described in Section 9-3-402.

- 3782 (b) The center shall:
- 3783 (i) have an extensive outreach program that serves all regions of the state; and
- 3784 (ii) collaborate and coordinate with education, arts, technology, and engineering
- 3785 entities, including schools and industries.
- 3786 (2) The authority has perpetual succession as a body politic and corporate and may:
- 3787 (a) adopt, amend, and repeal rules, policies, and procedures for the regulation of its
- 3788 affairs and the conduct of its business;
- 3789 (b) sue and be sued in its own name;
- 3790 (c) maintain an office at any place or places within this state it may designate;
- 3791 (d) adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry
- 3792 into effect the powers and purposes of the authority and the conduct of its business;
- 3793 (e) purchase, lease, sell, and otherwise dispose of property and rights-of-way;
- 3794 (f) employ experts, advisory groups, and other professionals it considers necessary;
- 3795 (g) employ and retain independent legal counsel;
- 3796 (h) make and execute contracts and all other instruments necessary or convenient for
- 3797 the performance of its duties and the exercise of its duties under this part to create, operate,
- 3798 and maintain a Science Center in Utah;
- 3799 (i) procure insurance for liability and against any loss in connection with its property
- 3800 and other assets in amounts and from insurers it considers desirable;
- 3801 (j) borrow money, receive appropriation from the Legislature, and receive other public
- 3802 moneys and accept aid or contributions from any source of money, property, labor, or other
- 3803 things of value to be held, used, and applied to carry out the purposes of this part subject to the
- 3804 conditions upon which the grants and contributions are made, including[~~, but not limited to,~~]
- 3805 gifts or grants from any department, agency, or instrumentality of the United States or of this
- 3806 state for any purpose consistent with this part;
- 3807 (k) enter into agreements with any department, agency, or instrumentality or political
- 3808 subdivision of the United States or this state for the purpose of providing for the creation,
- 3809 operation, and maintenance of a Science Center in Utah; and

3810 (1) to do any act necessary or convenient to the exercise of the powers granted by this  
3811 part.

3812 (3) All monies received by the authority under Subsection (2)(j) and from any other  
3813 source shall be for the exclusive use of the authority to create, operate, maintain, improve, and  
3814 provide for a Science Center in Utah. The monies received by the authority may not be used  
3815 for any other purpose or by any other entity.

3816 Section 107. Section **9-4-301** is amended to read:

3817 **9-4-301. Legislative intent -- Purpose and policy.**

3818 (1) It is the intent of the Legislature to make available funds received by the state from  
3819 federal mineral lease revenues under Section 59-21-2, bonus payments on federal oil shale  
3820 lease tracts U-A and U-B, and all other bonus payments on federal mineral leases to be used  
3821 for the alleviation of social, economic, and public finance impacts resulting from the  
3822 development of natural resources in this state, subject to the limitations provided for in Section  
3823 35 of the Mineral Leasing Act of 1920 (41 Stat. 450, 30 U.S.C. Sec. 191).

3824 (2) The purpose of this part is to maximize the long term benefit of funds derived from  
3825 these lease revenues and bonus payments by fostering funding mechanisms which will,  
3826 consistent with sound financial practices, result in the greatest use of financial resources for  
3827 the greatest number of citizens of this state, with priority given to those communities  
3828 designated as impacted by the development of natural resources covered by the Mineral  
3829 Leasing Act.

3830 (3) The policy of this state is to promote cooperation and coordination between the  
3831 state and its agencies and political subdivisions with individuals, firms, and business  
3832 organizations engaged in the development of the natural resources of this state. The purpose  
3833 of such efforts [should] include private sector participation, financial and otherwise, in the  
3834 alleviation of impacts associated with resources development activities.

3835 Section 108. Section **9-4-602** is amended to read:

3836 **9-4-602. Definitions.**

3837 As used in this part:

- 3838 (1) "Area of operation" means:
- 3839 (a) in the case of an authority of a city, the city, except that the area of operation of an
- 3840 authority of any city does not include any area that lies within the territorial boundaries of
- 3841 some other city; or
- 3842 (b) in the case of an authority of a county, all of the county for which it is created
- 3843 except, that a county authority may not undertake any project within the boundaries of any
- 3844 city unless a resolution has been adopted by the governing body of the city (and by any
- 3845 authority which shall have been theretofore established and authorized to exercise its powers
- 3846 in the city) declaring that there is need for the county authority to exercise its powers within
- 3847 that city.
- 3848 (2) "Blighted area" means any area where dwellings predominate that, by reason of
- 3849 dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary
- 3850 facilities or any combination of these factors, are detrimental to safety, health, and morals.
- 3851 (3) "Bonds" means any bonds, notes, interim certificates, debentures, or other
- 3852 obligations issued by an authority pursuant to this part.
- 3853 (4) "City" means any city or town in the state.
- 3854 (5) "Clerk" means the city clerk or the county clerk, or the officer charged with the
- 3855 duties customarily imposed on the clerk.
- 3856 (6) "County" means any county in the state.
- 3857 (7) "Elderly" means a person who meets the age, disability, or other conditions
- 3858 established by regulation of the authority.
- 3859 (8) "Federal government" includes the United States of America, the Department of
- 3860 Housing and Urban Development, or any other agency or instrumentality, corporate or
- 3861 otherwise, of the United States.
- 3862 (9) "Governing body" means, in the case of a city, the council or other body of the city
- 3863 in which is vested legislative authority customarily imposed on the city council, and in the
- 3864 case of a county, the board of county commissioners.
- 3865 (10) "Housing authority" or "authority" means any public body corporate and politic

3866 created by this part.

3867 (11) (a) "Housing project" or "project" means any work or undertaking, on contiguous  
3868 or noncontiguous sites to:

3869 (i) demolish, clear, or remove buildings from any blighted area;

3870 (ii) provide or assist in providing decent, safe, and sanitary urban or rural dwellings,  
3871 apartments, or other living accommodations for persons of medium and low income by any  
3872 suitable methods, including [~~but not limited to~~] rental, sale of individual units in single or  
3873 multifamily structures under conventional condominium, cooperative sales contract,  
3874 lease-purchase agreement, loans, or subsidizing of rentals or charges; or

3875 (iii) accomplish a combination of the foregoing.

3876 (b) "Housing project" includes:

3877 (i) buildings, land, equipment, facilities, and other real or personal property for  
3878 necessary, convenient, or desirable appurtenances;

3879 (ii) streets, sewers, water service, utilities, parks, site preparation and landscaping;

3880 (iii) facilities for administrative, community, health, recreational, welfare, or other  
3881 purposes;

3882 (iv) the planning of the buildings and other improvements;

3883 (v) the acquisition of property or any interest therein;

3884 (vi) the demolition of existing structures;

3885 (vii) the construction, reconstruction, rehabilitation, alteration, or repair of the  
3886 improvements and all other work in connection with them; and

3887 (viii) all other real and personal property and all tangible or intangible assets held or  
3888 used in connection with the housing project.

3889 (12) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or  
3890 other catastrophe which in the determination of the governing body is of sufficient severity  
3891 and magnitude to warrant the use of available resources of the federal, state, and local  
3892 governments to alleviate the damage, hardship, or suffering caused.

3893 (13) "Mayor" means the mayor of the city or the officer charged with the duties

3894 customarily imposed on the mayor or executive head of a city.

3895 (14) "Obligee of an authority" or "obligee" includes any bondholder, agent or trustee  
3896 for any bondholder, any lessor demising to the authority used in connection with a project, any  
3897 assignee or assignees of the lessor's interest in whole or in part, and the federal government  
3898 when it is a party to any contract with the authority.

3899 (15) "Persons of medium and low income" mean persons or families who, as  
3900 determined by the authority undertaking a project, cannot afford to pay the amounts at which  
3901 private enterprise, unaided by appropriate assistance, is providing a substantial supply of  
3902 decent, safe and sanitary housing.

3903 (16) "Person with a disability" means a person with any disability as defined by and  
3904 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

3905 (17) "Public body" means any city, county or municipal corporation, commission,  
3906 district, authority, agency, subdivision, or other body of any of the foregoing.

3907 (18) "Real property" includes all lands, improvements, and fixtures on them, property  
3908 of any nature appurtenant to them or used in connection with them, and every estate, interest,  
3909 and right, legal or equitable, including terms for years.

3910 Section 109. Section **9-4-703** is amended to read:

3911 **9-4-703. Housing loan fund board -- Duties -- Expenses.**

3912 (1) There is created the Olene Walker Housing Loan Fund Board.

3913 (2) The board shall be composed of 11 voting members.

3914 (a) The governor shall appoint the following members to four-year terms:

3915 (i) two members from local governments;

3916 (ii) two members from the mortgage lending community;

3917 (iii) one member from real estate sales interests;

3918 (iv) one member from home builders interests;

3919 (v) one member from rental housing interests;

3920 (vi) one member from housing advocacy interests;

3921 (vii) one member of the manufactured housing interest; and

- 3922 (viii) two members of the general public.
- 3923 (b) The director or his designee shall serve as the secretary of the committee.
- 3924 (c) The members of the board shall annually elect a chair from among the voting  
3925 membership of the board.
- 3926 (3) (a) Notwithstanding the requirements of Subsection (2), the governor shall, at the  
3927 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
3928 board members are staggered so that approximately half of the board is appointed every two  
3929 years.
- 3930 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
3931 appointed for the unexpired term.
- 3932 (4) (a) The board shall:
- 3933 (i) meet regularly, at least quarterly, on dates fixed by the board;
- 3934 (ii) keep minutes of its meetings; and
- 3935 (iii) comply with the procedures and requirements of Title 52, Chapter 4, Open and  
3936 Public Meetings Act.
- 3937 (b) Seven members of the board constitute a quorum, and the governor, the chair, or a  
3938 majority of the board may call a meeting of the board.
- 3939 (5) The board shall:
- 3940 (a) review the housing needs in the state;
- 3941 (b) determine the relevant operational aspects of any grant, loan, or revenue collection  
3942 program established under the authority of this chapter;
- 3943 (c) determine the means to implement the policies and goals of this chapter;
- 3944 (d) [~~determine~~] select specific projects [~~that the board considers should~~] to receive  
3945 grant or loan moneys; and
- 3946 (e) determine how fund moneys shall be allocated and distributed.
- 3947 (6) (a) (i) Members who are not government employees shall receive no compensation  
3948 or benefits for their services, but may receive per diem and expenses incurred in the  
3949 performance of the member's official duties at the rates established by the Division of Finance

3950 under Sections 63A-3-106 and 63A-3-107.

3951 (ii) Members may decline to receive per diem and expenses for their service.

3952 (b) (i) State government employee members who do not receive salary, per diem, or  
3953 expenses from their agency for their service may receive per diem and expenses incurred in the  
3954 performance of their official duties from the board at the rates established by the Division of  
3955 Finance under Sections 63A-3-106 and 63A-3-107.

3956 (ii) State government employee members may decline to receive per diem and  
3957 expenses for their service.

3958 (c) (i) Local government members who do not receive salary, per diem, or expenses  
3959 from the entity that they represent for their service may receive per diem and expenses  
3960 incurred in the performance of their official duties at the rates established by the Division of  
3961 Finance under Sections 63A-3-106 and 63A-3-107.

3962 (ii) Local government members may decline to receive per diem and expenses for their  
3963 service.

3964 Section 110. Section **9-4-914** is amended to read:

3965 **9-4-914. Capital reserve funds -- Capital reserve fund requirement --**

3966 **Establishment of other funds.**

3967 (1) (a) (i) The corporation may create and establish one or more reserve funds, herein  
3968 referred to as "capital reserve funds", from:

3969 (A) any proceeds of sale of notes or bonds, to the extent provided in the resolution or  
3970 resolutions of the corporation authorizing the issuance thereof;

3971 (B) any monies appropriated and made available by the state for the purpose of the  
3972 funds;

3973 (C) any monies directed by the corporation to be transferred to the funds; and

3974 (D) any other monies which may be made available to the corporation for the purpose  
3975 of the funds from any other source or sources.

3976 (ii) All monies held in any capital reserve fund shall be used, as required, solely for the  
3977 payment of the principal of bonds or of the sinking fund payments with respect to the bonds,

3978 the purchase or redemption of bonds, the payment of interest on bonds, or the payment of any  
3979 redemption premium required to be paid when the bonds are redeemed prior to maturity.

3980 (b) (i) Monies in any capital reserve fund may not be withdrawn from the fund at any  
3981 time in an amount as would reduce the level of monies in the fund to less than the capital  
3982 reserve fund requirement, except for the purpose of paying principal and redemption price of  
3983 and interest on bonds and the sinking fund payments, as the payments become due and for the  
3984 payment of which other monies of the corporation are not available.

3985 (ii) Any income or interest earned by the investment of monies held in any fund may  
3986 be transferred by the corporation to other funds or accounts of the corporation to the extent  
3987 that the transfer does not reduce the amount of the fund to below the capital reserve fund  
3988 requirement.

3989 (c) The corporation may provide by resolution or resolutions that it may not issue  
3990 bonds under a resolution or resolutions at any time if upon issuance the amount in the capital  
3991 reserve fund which will secure the bonds shall be less than the capital reserve fund  
3992 requirement, unless the corporation at the time of issuance of the bonds shall deposit in the  
3993 fund from the proceeds of the bonds to be so issued, or other sources, an amount which,  
3994 together with the amount then in the fund, ~~shall not~~ may not be less than the capital reserve  
3995 fund requirement.

3996 (d) In computing the amount of the capital reserve funds for the purpose of this part,  
3997 securities in which all or a portion of the funds shall be invested shall be valued at par, cost, or  
3998 by other method of valuation as the corporation may provide by resolution.

3999 (e) (i) "Capital reserve fund requirement" means, as of any particular date of  
4000 computation, and with respect to any particular issue of bonds, an amount as the corporation  
4001 may provide, or may have previously provided, by resolution, which amount may be in the  
4002 form of a sum certain or a formula.

4003 (ii) In establishing reserves and setting capital reserve fund requirements, the  
4004 corporation shall consider the following:

4005 (A) the qualifications for obtaining an investment grade rating from one or more

4006 nationally recognized bond rating agencies;

4007 (B) the economic feasibility and marketability of the bonds being issued, taking into  
4008 account all security for the bonds, including the capital reserve fund; and

4009 (C) applicable requirements pertaining to reserve funds under federal and state income  
4010 tax laws and regulations.

4011 (f) (i) To assure the continued operation and solvency of the corporation for carrying  
4012 out of its corporate purposes, provision is made in Subsection (1)(b) for the accumulation in  
4013 the capital reserve funds of an amount equal to the maximum capital reserve fund requirement.

4014 (ii) The president of the corporation shall annually, on or before December first,  
4015 certify to the governor and to the director of finance the amount, if any, required to restore the  
4016 capital reserve funds to the capital reserve fund requirement.

4017 (iii) The governor may request from the Legislature an appropriation of the certified  
4018 amount to restore the capital reserve funds to the capital reserve fund requirement.

4019 (g) Amounts appropriated, if any, shall be repaid to the General Fund of the state,  
4020 from any monies in excess of the amounts which the corporation determines will keep it  
4021 self-supporting.

4022 (2) The corporation may create and establish any other funds as may be necessary or  
4023 desirable for its corporate purposes.

4024 Section 111. Section **9-4-924** is amended to read:

4025 **9-4-924. Allocation of qualified mortgage bonds to counties, cities, and towns.**

4026 (1) (a) The corporation is authorized to allocate all or part of the amount to one or  
4027 more counties, cities, and towns within the state or to any authority or agency of any such  
4028 entities that is authorized to issue qualified mortgage bonds.

4029 (b) An allocation may not be made under this section unless the entity applies to the  
4030 corporation for an allocation and the corporation finds that the proposed allocation would be  
4031 in the best interest of the state.

4032 (c) The corporation shall take the following factors into consideration before making  
4033 its finding:

4034 (i) the number of "low and moderate income persons," within the meaning of the Utah  
4035 Housing Corporation Act, within a given area;

4036 (ii) the likelihood that the proposed issuing entity would use the allocation to issue  
4037 qualified mortgage bonds in a timely manner;

4038 (iii) the cost to the proposed issuing entity to issue the bonds relative to the cost to the  
4039 corporation to issue the bonds;

4040 (iv) any special costs or benefits which would result from the issuance of such bonds  
4041 by the proposed issuing entity;

4042 (v) the capability of the proposed issuing entity to administer an issuance of qualified  
4043 mortgage bonds;

4044 (vi) the needs of the proposed issuing entity relative to the needs of other counties,  
4045 cities, and towns;

4046 (vii) the effects of the proposed allocation on counties, cities, and towns which are not  
4047 served by the proposed issuing entity; and

4048 (viii) any other factors the corporation considers relevant to a determination of what is  
4049 in the best interest of Utah with regard to single family housing.

4050 (2) (a) The corporation shall specify the time within which an issuing entity [~~must~~]  
4051 shall use the allocation.

4052 (b) Any part of the allocation which is not used within the time prescribed  
4053 automatically terminates.

4054 (c) The corporation may extend the time initially prescribed for use of the allocation.

4055 Section 112. Section **9-6-203** is amended to read:

4056 **9-6-203. Division powers relating to property.**

4057 (1) The division may:

4058 (a) take by purchase, grant, gift, devise, or bequest, any property, real or personal, for  
4059 any purpose appropriate to its objects; and

4060 (b) convert property received by gift, grant, devise, or bequest and not suitable for its  
4061 uses, into other property so available or into money.

4062           (2) The property received or converted under Subsection (1) shall be held, invested,  
4063 and managed and its proceeds used by the division for the purposes and under the conditions  
4064 prescribed in the grant or donation.

4065           (3) If by the terms of any grant, gift, devise, or bequest, conditions are imposed that  
4066 are impracticable under the law, the grant or donation [~~shall not~~] does not fail but the  
4067 conditions shall be rejected and the intent of the grantor or donor carried out as nearly as may  
4068 be.

4069           (4) A grant, gift, devise, or bequest for the benefit of the division may not be defeated  
4070 or prejudiced by any misnomer, misdescription, or informality if the intention of the grantor or  
4071 donor can be shown or ascertained with reasonable certainty.

4072           Section 113. Section **9-6-405** is amended to read:

4073           **9-6-405. Procedures, guidelines, and rules.**

4074           (1) The division shall follow these guidelines in administering the program:

4075           (a) Works of art shall be acquired under the program for use only with respect to those  
4076 buildings or facilities that the division determines have significant public use or access,  
4077 especially where the design and technical construction of the building or facility lend  
4078 themselves to works of art. All funds set aside and administered by the program from  
4079 appropriations for any state building or facility of which any part is obtained from the issuance  
4080 of bonds shall be used only to acquire works of art that will be placed in or at, and remain a  
4081 part of, that building or facility, to the extent necessary to preserve the federal income tax  
4082 exemption otherwise allowed for interest paid on the bonds.

4083           (b) The goal of the division in administering the program is to fairly distribute works  
4084 of art throughout the various social, economic, and geographic communities of the state.

4085           (c) The division shall give first preference to Utah artists, and to artists from other  
4086 states which have similar percent-for-art programs and demonstrate a reciprocal preference for  
4087 Utah artists.

4088           (d) The division shall involve the director of the Division of Facilities Construction  
4089 and Management, or the director's designee, and the project architect in the process of

4090 screening or selecting works of art or artists to create works of art for each project and shall  
4091 involve in that process representatives from the project's principal user or contracting agency,  
4092 the community in which the project is located, and the art profession. The project's principal  
4093 user or contracting agency shall have representation at least equal to any other entity on the  
4094 selection committee, as designated by the project's president or director. Any selection and  
4095 placement of art shall be by a majority decision of the user agency representatives on the  
4096 committee and a majority decision of the entire committee. The selection and placement  
4097 ~~must~~ shall be approved by the president or director of the principal user.

4098 (e) Any relocation of art placed under this program shall be done with the participation  
4099 from the division and the Division of Facilities Construction and Management and with  
4100 approval from the president or director of the principal user.

4101 (f) The costs of administering the program and conserving and maintaining all works  
4102 of art placed under the program are limited to 15% of the funds deposited in the Utah  
4103 Percent-for-Art Account.

4104 (2) The division shall adopt procedures, guidelines, and rules as necessary to  
4105 implement this chapter and administer the program.

4106 Section 114. Section **9-6-504** is amended to read:

4107 **9-6-504. Duties of board.**

4108 The board shall:

4109 (1) allocate moneys from the state fund to the endowment fund created by a qualifying  
4110 organization under Section 9-6-503;

4111 (2) determine the eligibility of each qualifying organization to receive moneys from  
4112 the state fund into the endowment fund of the qualifying organization and be the final arbiter  
4113 of eligibility;

4114 (3) determine the matching amount each qualifying organization ~~must~~ shall raise in  
4115 order to qualify to receive moneys from the state fund;

4116 (4) establish a date by which each qualifying organization ~~must~~ shall provide its  
4117 matching funds;

4118 (5) verify that matching funds have been provided by each qualifying organization by  
4119 the date determined in Subsection (4); and

4120 (6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
4121 establish criteria by rule not otherwise prescribed in this chapter for determining the eligibility  
4122 of qualifying organizations to receive moneys from the state fund.

4123 Section 115. Section **9-7-213** is amended to read:

4124 **9-7-213. Rulemaking.**

4125 The division may make rules in accordance with Title 63G, Chapter 3, Utah  
4126 Administrative Rulemaking Act, necessary to implement and administer the provisions of this  
4127 chapter including:

4128 (1) standards which [~~must~~] shall be met by libraries to obtain and retain a designation  
4129 as a depository library;

4130 (2) the method by which grants are made to individual libraries, but not including  
4131 appropriations made directly to any other agency or institution;

4132 (3) standards for the certification of public librarians; and

4133 (4) standards for the public library online access policy required in Section 9-7-215.

4134 Section 116. Section **9-7-504** is amended to read:

4135 **9-7-504. Library board duties -- Library fund deposits.**

4136 (1) The library board of directors shall, with the approval of the county executive and  
4137 in accordance with county ordinances, policies, and procedures:

4138 (a) be responsible for:

4139 (i) the expenditure of the library fund;

4140 (ii) the construction, lease, or sale of library buildings and land; and

4141 (iii) the operation and care of the library; and

4142 (b) purchase, lease, or sell land, and purchase, lease, construct, or sell buildings, for  
4143 the benefit of the library.

4144 (2) The board has those powers and duties as prescribed by county ordinance,  
4145 including[~~, but not limited to,~~] establishing policies for collections and information resources

4146 that are consistent with state and federal law.

4147 (3) (a) All tax moneys received for the library shall be deposited in the county treasury  
4148 to the credit of the library fund, and may not be used for any purpose except that of the county  
4149 library.

4150 (b) All moneys collected by the library shall be deposited to the credit of the library  
4151 fund.

4152 Section 117. Section **9-12-103** is amended to read:

4153 **9-12-103. Eligibility criteria.**

4154 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4155 department may make rules establishing eligibility criteria for recipients of assistance under  
4156 this chapter. A recipient of assistance under this chapter [~~must~~] shall demonstrate:

4157 (1) that the recipient's family, household, or individual income is 150% of the federal  
4158 poverty level or less;

4159 (2) that the recipient is responsible for paying the recipient's home energy costs; and

4160 (3) compliance with any rules established by the department under this section.

4161 Section 118. Section **9-12-201** is amended to read:

4162 **9-12-201. Moratorium on involuntary termination for nonpayment of utility bills**  
4163 **-- Eligibility criteria -- Department to establish and certify.**

4164 (1) The department shall establish a program for a seasonal moratorium for  
4165 involuntary termination for nonpayment by residential customers of essential utility bills. An  
4166 essential utility is a utility regulated by the Public Service Commission under Title 54, which  
4167 is in the business of the retail distribution of electricity or natural gas. A residential customer  
4168 is a customer defined as in a residential class by the Public Service Commission.

4169 (2) A residential customer [~~must~~] shall meet the following criteria to qualify for the  
4170 program:

4171 (a) gross household income is less than 125% of the federal poverty level or the  
4172 household has suffered a medical or other emergency, loss of employment, or is experiencing  
4173 other circumstances which have resulted in a substantial loss of income;

4174 (b) the customer has made application to public and private energy assistance  
4175 programs;

4176 (c) the customer is willing to make a good faith effort to pay these utility bills on a  
4177 consistent basis; and

4178 (d) any additional information required by the department.

4179 (3) A residential customer may file with a local department office an affidavit attesting  
4180 eligibility under the criteria in Subsection (2). The department shall certify that the customer  
4181 has met the eligibility requirements and forward a copy of the affidavit to the effected utility.

4182 Section 119. Section **10-1-105** is amended to read:

4183 **10-1-105. No changes intended.**

4184 Unless otherwise specifically provided in this act, the provisions of this act [~~shall not~~  
4185 may not operate in any way to affect the property or contract rights or other actions which may  
4186 exist in favor of or against any municipality. Nor shall this act operate in any way to change or  
4187 affect any ordinance, order or resolution in force in any municipality and such ordinances,  
4188 orders and resolutions which are not repugnant to law, shall continue in full force and effect  
4189 until repealed or amended.

4190 Section 120. Section **10-1-108** is amended to read:

4191 **10-1-108. Cumulative powers -- Powers not in derogation of state agencies.**

4192 The provisions of this act or any other act not expressly repealed by Section 10-1-114  
4193 shall be considered as an alternative or additional power and not as a limitation on any other  
4194 power granted to or possessed by municipalities. The provisions of this act [~~shall not~~] may not  
4195 be considered as impairing, altering, modifying or repealing any of the jurisdiction or powers  
4196 possessed by any department, division, commission, board, or office of state government.

4197 Section 121. Section **10-1-109** is amended to read:

4198 **10-1-109. Saving clause.**

4199 The repeal of the titles, chapters and sections specified in Section 10-1-114 [~~shall not~~]  
4200 do not:

4201 (1) affect suits pending or rights existing immediately prior to the effective date of this

4202 act;

4203 (2) impair, avoid, or affect any grant or conveyance made or right acquired or cause of  
4204 action now existing under any repealed act or amendment thereto; or

4205 (3) affect or impair the validity of any bonds or other obligation issued or sold prior to  
4206 the effective date of this act.

4207 The repeal of any validating act or part thereof [~~shall not~~] does not avoid the effect of  
4208 the validation. No act repealed by Section 10-1-114 shall repeal any act or part thereof which  
4209 embraces the same or similar subject matter as the act repealed.

4210 Section 122. Section **10-1-112** is amended to read:

4211 **10-1-112. Headings do not limit sections.**

4212 Title, chapter, part, or section headings contained herein [~~shall not~~] may not be deemed  
4213 to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions  
4214 of any title, chapter, part or section of this act.

4215 Section 123. Section **10-1-113** is amended to read:

4216 **10-1-113. Severability clause.**

4217 If any chapter, part, section, paragraph or subsection of this act, or the application  
4218 thereof is held to be invalid, the remainder of this act [~~shall not be~~] is not affected thereby.

4219 Section 124. Section **10-2-109** is amended to read:

4220 **10-2-109. Incorporation petition -- Requirements and form.**

4221 (1) At any time within 18 months of the completion of the public hearings required  
4222 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be  
4223 incorporated as a city may be filed in the office of the clerk of the county in which the area is  
4224 located.

4225 (2) Each petition under Subsection (1) shall:

4226 (a) be signed by the owners of private real property that:

4227 (i) is located within the area proposed to be incorporated;

4228 (ii) covers at least 1/3 of the total private land area within the area; and

4229 (iii) is equal in value to at least 1/3 of the value of all private real property within the

4230 area;

4231 (b) indicate the typed or printed name and current residence address of each owner  
4232 signing the petition;

4233 (c) describe the area proposed to be incorporated as a city, as described in the  
4234 feasibility study request or modified request that meets the requirements of Subsection (3);

4235 (d) state the proposed name for the proposed city;

4236 (e) designate five signers of the petition as petition sponsors, one of whom shall be  
4237 designated as the contact sponsor, with the mailing address and telephone number of each;

4238 (f) state that the signers of the petition appoint the sponsors, if the incorporation  
4239 measure passes, to represent the signers in the process of:

4240 (i) selecting the number of commission or council members the new city [~~should~~] will  
4241 have; and

4242 (ii) drawing district boundaries for the election of commission or council members, if  
4243 the voters decide to elect commission or council members by district;

4244 (g) be accompanied by and circulated with an accurate plat or map, prepared by a  
4245 licensed surveyor, showing the boundaries of the proposed city; and

4246 (h) substantially comply with and be circulated in the following form:

4247 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
4248 city)

4249 To the Honorable County Legislative Body of (insert the name of the county in which  
4250 the proposed city is located) County, Utah:

4251 We, the undersigned owners of real property within the area described in this petition,  
4252 respectfully petition the county legislative body to submit to the registered voters residing  
4253 within the area described in this petition, at a special election held for that purpose, the  
4254 question of whether the area should incorporate as a city. Each of the undersigned affirms that  
4255 each has personally signed this petition and is an owner of real property within the described  
4256 area, and that the current residence address of each is correctly written after the signer's name.

4257 The area proposed to be incorporated as a city is described as follows: (insert an accurate

4258 description of the area proposed to be incorporated).

4259 (3) A petition for incorporation of a city under Subsection (1) may not be filed unless  
4260 the results of the feasibility study or supplemental feasibility study show that the average  
4261 annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average  
4262 annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

4263 (4) A signature on a request under Section 10-2-103 or a modified request under  
4264 Section 10-2-107 may be used toward fulfilling the signature requirement of Subsection (2)(a):

4265 (a) if the request under Section 10-2-103 or modified request under Section 10-2-107  
4266 notified the signer in conspicuous language that the signature, unless withdrawn, would also  
4267 be used for purposes of a petition for incorporation under this section; and

4268 (b) unless the signer files with the county clerk a written withdrawal of the signature  
4269 before the petition under this section is filed with the clerk.

4270 Section 125. Section **10-2-303** is amended to read:

4271 **10-2-303. Effect of change in class.**

4272 (1) If a municipality changes from one class to another:

4273 (a) all property, property rights, and other rights that belonged to or were vested in the  
4274 municipality at the time of the change shall belong to and be vested in it after the change;

4275 (b) no contract, claim, or right of the municipality or demand or liability against it  
4276 shall be altered or affected in any way by the change;

4277 (c) each ordinance, order, and resolution in force in the municipality when it changes  
4278 classes shall, to the extent that it is not inconsistent with law, not be affected by the change  
4279 and shall remain in effect until repealed or amended;

4280 (d) the change [~~shall not~~] may not affect the identity of the municipality;

4281 (e) each municipal officer in office at the time of the change shall continue as an  
4282 officer until that officer's term expires and a successor is duly elected and qualified; and

4283 (f) the municipality maintains after the change in class the same form of government  
4284 that it had immediately before the change.

4285 (2) (a) A change in class does not affect an action at law, prosecution, business, or

4286 work of the municipality changing classes, and proceedings shall continue and may be  
4287 conducted and proceed as if no change in class had occurred.

4288 (b) Notwithstanding Subsection (2)(a), if the law applicable to a municipality under  
4289 the new class provides the municipality a different remedy with respect to a right that it  
4290 possessed at the time of the change, the remedy shall be cumulative to the remedy applicable  
4291 before the change in class.

4292 Section 126. Section **10-2-403** is amended to read:

4293 **10-2-403. Annexation petition -- Requirements -- Notice required before filing.**

4294 (1) Except as provided in Section 10-2-418, the process to annex an unincorporated  
4295 area to a municipality is initiated by a petition as provided in this section.

4296 (2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed  
4297 annexation of an area located in a county of the first class, the person or persons intending to  
4298 file a petition shall:

4299 (A) file with the city recorder or town clerk of the proposed annexing municipality a  
4300 notice of intent to file a petition; and

4301 (B) send a copy of the notice of intent to each affected entity.

4302 (ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of  
4303 the area that is proposed to be annexed.

4304 (b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be  
4305 annexed is located shall:

4306 (A) mail the notice described in Subsection (2)(b)(iii) to:

4307 (I) each owner of real property located within the area proposed to be annexed; and

4308 (II) each owner of real property located within 300 feet of the area proposed to be  
4309 annexed; and

4310 (B) send to the proposed annexing municipality a copy of the notice and a certificate  
4311 indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

4312 (ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20  
4313 days after receiving from the person or persons who filed the notice of intent:

4314 (A) a written request to mail the required notice; and  
4315 (B) payment of an amount equal to the county's expected actual cost of mailing the  
4316 notice.

4317 (iii) Each notice required under Subsection (2)(b)(i)(A) shall:

4318 (A) be in writing;

4319 (B) state, in bold and conspicuous terms, substantially the following:

4320 "Attention: Your property may be affected by a proposed annexation.

4321 Records show that you own property within an area that is intended to be included in a  
4322 proposed annexation to (state the name of the proposed annexing municipality) or that is  
4323 within 300 feet of that area. If your property is within the area proposed for annexation, you  
4324 may be asked to sign a petition supporting the annexation. You may choose whether or not to  
4325 sign the petition. By signing the petition, you indicate your support of the proposed  
4326 annexation. If you sign the petition but later change your mind about supporting the  
4327 annexation, you may withdraw your signature by submitting a signed, written withdrawal with  
4328 the recorder or clerk of (state the name of the proposed annexing municipality) within 30 days  
4329 after (state the name of the proposed annexing municipality) receives notice that the petition  
4330 has been certified.

4331 There will be no public election on the proposed annexation because Utah law does not  
4332 provide for an annexation to be approved by voters at a public election. Signing or not signing  
4333 the annexation petition is the method under Utah law for the owners of property within the  
4334 area proposed for annexation to demonstrate their support of or opposition to the proposed  
4335 annexation.

4336 You may obtain more information on the proposed annexation by contacting (state the  
4337 name, mailing address, telephone number, and email address of the official or employee of the  
4338 proposed annexing municipality designated to respond to questions about the proposed  
4339 annexation), (state the name, mailing address, telephone number, and email address of the  
4340 county official or employee designated to respond to questions about the proposed  
4341 annexation), or (state the name, mailing address, telephone number, and email address of the

4342 person who filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person  
4343 filed the notice of intent, one of those persons). Once filed, the annexation petition will be  
4344 available for inspection and copying at the office of (state the name of the proposed annexing  
4345 municipality) located at (state the address of the municipal offices of the proposed annexing  
4346 municipality)."; and

4347 (C) be accompanied by an accurate map identifying the area proposed for annexation.

4348 (iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any  
4349 other information or materials related or unrelated to the proposed annexation.

4350 (c) (i) After receiving the certificate from the county as provided in Subsection  
4351 (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or  
4352 persons who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation  
4353 petition for the annexation proposed in the notice of intent.

4354 (ii) An annexation petition provided by the proposed annexing municipality may be  
4355 duplicated for circulation for signatures.

4356 (3) Each petition under Subsection (1) shall:

4357 (a) be filed with the city recorder or town clerk, as the case may be, of the proposed  
4358 annexing municipality;

4359 (b) contain the signatures of:

4360 (i) the owners of private real property that:

4361 (A) is located within the area proposed for annexation;

4362 (B) (I) subject to Subsection (3)(b)(i)(B)(II), covers a majority of the private land area  
4363 within the area proposed for annexation; and

4364 (II) covers 100% of the private land area within the area proposed for annexation, if  
4365 the area is within:

4366 (Aa) an agriculture protection area created under Title 17, Chapter 41, Agriculture and  
4367 Industrial Protection Areas; or

4368 (Bb) a migratory bird production area created under Title 23, Chapter 28, Migratory  
4369 Bird Production Area; and

4370 (C) is equal in value to at least 1/3 of the value of all private real property within the  
4371 area proposed for annexation; or

4372 (ii) if all the real property within the area proposed for annexation is owned by a  
4373 public entity other than the federal government, the owner of all the publicly owned real  
4374 property;

4375 (c) if the petition proposes the annexation of an area located within a township,  
4376 explain that if the annexation petition is granted, the area will also be withdrawn from the  
4377 township;

4378 (d) be accompanied by:

4379 (i) an accurate and recordable map, prepared by a licensed surveyor, of the area  
4380 proposed for annexation; and

4381 (ii) a copy of the notice sent to affected entities as required under Subsection  
4382 (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

4383 (e) if the area proposed to be annexed is located in a county of the first class, contain  
4384 on each signature page a notice in bold and conspicuous terms that states substantially the  
4385 following:

4386 "Notice:

4387 • There will be no public election on the annexation proposed by this petition because  
4388 Utah law does not provide for an annexation to be approved by voters at a public election.

4389 • If you sign this petition and later decide that you do not support the petition, you may  
4390 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk  
4391 of (state the name of the proposed annexing municipality). If you choose to withdraw your  
4392 signature, you [~~must~~] shall do so no later than 30 days after (state the name of the proposed  
4393 annexing municipality) receives notice that the petition has been certified.";

4394 (f) if the petition proposes the annexation of an area located in a county that is not the  
4395 county in which the proposed annexing municipality is located, be accompanied by a copy of  
4396 the resolution, required under Subsection 10-2-402(6), of the legislative body of the county in  
4397 which the area is located; and

4398 (g) designate up to five of the signers of the petition as sponsors, one of whom shall be  
4399 designated as the contact sponsor, and indicate the mailing address of each sponsor.

4400 (4) A petition under Subsection (1) may not propose the annexation of all or part of an  
4401 area proposed for annexation to a municipality in a previously filed petition that has not been  
4402 denied, rejected, or granted.

4403 (5) A petition under Subsection (1) proposing the annexation of an area located in a  
4404 county of the first class may not propose the annexation of an area that includes some or all of  
4405 an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103  
4406 or a petition under Section 10-2-125 if:

4407 (a) the request or petition was filed before the filing of the annexation petition; and

4408 (b) the request, a petition under Section 10-2-109 based on that request, or a petition  
4409 under Section 10-2-125 is still pending on the date the annexation petition is filed.

4410 (6) If practicable and feasible, the boundaries of an area proposed for annexation shall  
4411 be drawn:

4412 (a) along the boundaries of existing local districts and special service districts for  
4413 sewer, water, and other services, along the boundaries of school districts whose boundaries  
4414 follow city boundaries or school districts adjacent to school districts whose boundaries follow  
4415 city boundaries, and along the boundaries of other taxing entities;

4416 (b) to eliminate islands and peninsulas of territory that is not receiving municipal-type  
4417 services;

4418 (c) to facilitate the consolidation of overlapping functions of local government;

4419 (d) to promote the efficient delivery of services; and

4420 (e) to encourage the equitable distribution of community resources and obligations.

4421 (7) On the date of filing, the petition sponsors shall deliver or mail a copy of the  
4422 petition to:

4423 (a) the clerk of the county in which the area proposed for annexation is located; and

4424 (b) if any of the area proposed for annexation is within a township:

4425 (i) the legislative body of the county in which the township is located; and

4426 (ii) the chair of the township planning commission.

4427 (8) A property owner who signs an annexation petition proposing to annex an area  
4428 located in a county of the first class may withdraw the owner's signature by filing a written  
4429 withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30  
4430 days after the municipal legislative body's receipt of the notice of certification under  
4431 Subsection 10-2-405(2)(c)(i).

4432 Section 127. Section **10-2-510** is amended to read:

4433 **10-2-510. Boundary adjustment procedure not affected.**

4434 This part [~~shall not~~] may not be construed to abrogate, modify, or replace the boundary  
4435 adjustment procedure provided in Section 10-2-419.

4436 Section 128. Section **10-2-614** is amended to read:

4437 **10-2-614. Ordinances, resolutions, and orders.**

4438 All ordinances, resolutions and orders, in force in any of the municipalities when it is  
4439 consolidated, shall remain in full force and effect within the respective areas of the  
4440 municipalities which existed prior to consolidation insofar as the ordinances, resolutions and  
4441 orders are not repugnant to law, until repealed or amended, but [~~shall not~~] may not in any case  
4442 exceed three years. The governing body of the new municipality shall as soon as possible  
4443 adopt new ordinances, resolutions and orders for the uniform governance of the new  
4444 municipality.

4445 Section 129. Section **10-3-508** is amended to read:

4446 **10-3-508. Reconsideration.**

4447 Any action taken by the governing body [~~shall not~~] may not be reconsidered or  
4448 rescinded at any special meeting unless the number of members of the governing body present  
4449 at the special meeting is equal to or greater than the number of members present at the meeting  
4450 when the action was approved.

4451 Section 130. Section **10-3-608** is amended to read:

4452 **10-3-608. Rules of conduct for the public.**

4453 The governing body on a two-thirds vote may expel any person who is disorderly

4454 during the meeting of the governing body. This section or any action taken by the governing  
4455 body pursuant hereto [~~shall not~~] does not preclude prosecution under any other provision of  
4456 law.

4457 Section 131. Section **10-3-702** is amended to read:

4458 **10-3-702. Extent of power exercised by ordinance.**

4459 The governing body may pass any ordinance to regulate, require, prohibit, govern,  
4460 control or supervise any activity, business, conduct or condition authorized by this act or any  
4461 other provision of law. An officer of the municipality [~~shall not~~] may not be convicted of a  
4462 criminal offense where he relied on or enforced an ordinance he reasonably believed to be a  
4463 valid ordinance. It shall be a defense to any action for punitive damages that the official acted  
4464 in good faith in enforcing an ordinance or that he enforced an ordinance on advice of legal  
4465 counsel.

4466 Section 132. Section **10-3-704** is amended to read:

4467 **10-3-704. Form of ordinance.**

4468 Any ordinance passed by the governing body, after the effective date of this act, shall  
4469 contain and be in substantially the following order and form:

4470 (1) a number;

4471 (2) a title which indicates the nature of the subject matter of the ordinance;

4472 (3) a preamble which states the need or reason for the ordinance;

4473 (4) an ordaining clause which states "Be it ordained by the \_\_\_\_ (name of the  
4474 governing body and municipality):";

4475 (5) the body or subject of the ordinance;

4476 (6) when applicable, a statement indicating the penalty for violation of the ordinance  
4477 or a reference that the punishment is covered by an ordinance which prescribes the fines and  
4478 terms of imprisonment for the violation of a municipal ordinance; or, the penalty may  
4479 establish a classification of penalties and refer to such ordinance in which the penalty for such  
4480 violation is established;

4481 (7) a statement indicating the effective date of the ordinance or the date when the

4482 ordinance shall become effective after publication or posting as required by this chapter;

4483 (8) a line for the signature of the mayor or acting mayor to sign the ordinance;

4484 (9) a place for the municipal recorder to attest the ordinance and fix the seal of the  
4485 municipality; and

4486 (10) in municipalities where the mayor may disapprove an ordinance passed by the  
4487 legislative body, the ordinance [~~must~~] shall show, that it was passed with the mayor's approval  
4488 or that if the mayor disapproved the ordinance, that it was passed over his disapproval. If the  
4489 mayor neither approves, or disapproves an ordinance, the ordinance [~~should~~] shall show that it  
4490 became effective without the approval or disapproval of the mayor.

4491 Section 133. Section **10-3-717** is amended to read:

4492 **10-3-717. Purpose of resolutions.**

4493 Unless otherwise required by law, the governing body may exercise all administrative  
4494 powers by resolution including [~~but not limited to~~]: (1) establishing water and sewer rates; (2)  
4495 charges for garbage collection and fees charged for municipal services; (3) establishing  
4496 personnel policies and guidelines; and (4) regulating the use and operation of municipal  
4497 property. Punishment, fines or forfeitures may not be imposed by resolution.

4498 Section 134. Section **10-3-905** is amended to read:

4499 **10-3-905. Fees to be paid in advance.**

4500 The city engineer [~~shall not~~] may not record any drawings or instruments, or file any  
4501 papers or notices, or furnish any copies, or render any service connected with his office, until  
4502 the fees for the same are paid or tendered as prescribed by law or ordinance.

4503 Section 135. Section **10-3-907** is amended to read:

4504 **10-3-907. Recordation not to interfere with other recordation.**

4505 The recording or filing of any drawing or instrument in the city engineer's office [~~shall~~  
4506 ~~not~~] may not interfere or conflict in any way with the recording or filing of the same in other  
4507 offices of record.

4508 Section 136. Section **10-3-912** is amended to read:

4509 **10-3-912. Chief of department may suspend subordinates.**

4510 (1) The chief of each department may at any time suspend any subordinate officers,  
4511 members, employees, or agents employed therein when in his judgment the good of the service  
4512 demands it, and during the time of suspension, the person suspended [~~shall not be~~] is not  
4513 entitled to any salary or compensation whatsoever.

4514 (2) Any suspension of employees in the classified civil service which exceeds three  
4515 days or 24 working hours is subject to an appeal to the civil service commission as provided in  
4516 Section 10-3-1012.

4517 Section 137. Section **10-3-1004** is amended to read:

4518 **10-3-1004. Qualifications of commissioners -- Salary -- Removal.**

4519 Not more than two members of the civil service commission shall at any one time be of  
4520 the same political party. No member of the civil service commission shall during his tenure of  
4521 office hold any other public office, or be a candidate for any other public office. Each member  
4522 shall receive \$25 for each meeting of the commission which he shall attend, but [~~shall not~~]  
4523 may not receive more than \$100 in any one month. In case of misconduct, inability or willful  
4524 neglect in the performance of the duties of the office by any member, the member may be  
4525 removed from office by the board of city commissioners by a majority vote of the entire  
4526 membership, but the member shall, if he so desires, have opportunity to be heard in defense.

4527 Section 138. Section **10-3-1011** is amended to read:

4528 **10-3-1011. Temporary employees.**

4529 The head of each department, with the advice and consent of the board of city  
4530 commissioners, may employ any person for temporary work only, without making the  
4531 appointment from the certified list, but the appointment [~~shall not~~] may not be longer than one  
4532 month in the same calendar year, and under no circumstances shall the temporary employee be  
4533 appointed to a permanent position unless he shall have been duly certified by the civil service  
4534 commission as in other cases.

4535 Section 139. Section **10-3-1012.5** is amended to read:

4536 **10-3-1012.5. Appeal to Court of Appeals -- Scope of review.**

4537 Any final action or order of the commission may be appealed to the Court of Appeals

4538 for review. The notice of appeal [~~must~~] shall be filed within 30 days of the issuance of the  
4539 final action or order of the commission. The review by Court of Appeals shall be on the  
4540 record of the commission and shall be for the purpose of determining if the commission has  
4541 abused its discretion or exceeded its authority.

4542 Section 140. Section **10-3-1306** is amended to read:

4543 **10-3-1306. Interest in business entity regulated by municipality -- Disclosure**  
4544 **statement required.**

4545 (1) Every appointed or elected officer or municipal employee who is an officer,  
4546 director, agent, or employee or the owner of a substantial interest in any business entity which  
4547 is subject to the regulation of the municipality in which he is an elected or appointed officer or  
4548 municipal employee shall disclose the position held and the nature and value of his interest  
4549 upon first becoming appointed, elected, or employed by the municipality, and again at any  
4550 time thereafter if the elected or appointed officer's or municipal employee's position in the  
4551 business entity has changed significantly or if the value of his interest in the entity has  
4552 increased significantly since the last disclosure.

4553 (2) The disclosure shall be made in a sworn statement filed with the mayor. The  
4554 mayor shall report the substance of all such disclosure statements to the members of the  
4555 governing body, or may provide to the members of the governing body copies of the disclosure  
4556 statement within 30 days after the statement is received by him.

4557 (3) This section does not apply to instances where the value of the interest does not  
4558 exceed \$2,000. Life insurance policies and annuities [~~shall not~~] may not be considered in  
4559 determining the value of any such interest.

4560 Section 141. Section **10-5-103** is amended to read:

4561 **10-5-103. Withholding state money of town failing to file budget.**

4562 The state auditor is authorized to withhold state money allocated to a town if that town  
4563 fails to file a copy of a formally adopted budget or fails to comply with the annual financial  
4564 reporting and independent auditing requirements of this chapter. Such money [~~shall not~~] may  
4565 not be withheld if the town substantially complies with the requirements of this chapter.

4566 Section 142. Section **10-5-107** is amended to read:

4567 **10-5-107. Tentative budgets required for public inspection -- Contents --**

4568 **Adoption of tentative budget.**

4569 (1) (a) On or before the first regularly scheduled town council meeting of May, the  
4570 mayor shall:

4571 (i) prepare for the ensuing year, on forms provided by the state auditor, a tentative  
4572 budget for each fund for which a budget is required;

4573 (ii) make the tentative budget available for public inspection; and

4574 (iii) submit the tentative budget to the town council.

4575 (b) The tentative budget of each fund shall set forth in tabular form:

4576 (i) actual revenues and expenditures in the last completed fiscal year;

4577 (ii) estimated total revenues and expenditures for the current fiscal year; and

4578 (iii) the mayor's estimates of revenues and expenditures for the budget year.

4579 (2) (a) The mayor shall:

4580 (i) estimate the amount of revenue available to serve the needs of each fund;

4581 (ii) estimate the portion to be derived from all sources other than general property  
4582 taxes; and

4583 (iii) estimate the portion that [~~must~~] shall be derived from general property taxes.

4584 (b) From the estimates required by Subsection (2)(a), the mayor shall compute and  
4585 disclose in the budget the lowest rate of property tax levy that will raise the required amount of  
4586 revenue, calculating the levy on the latest taxable value.

4587 (3) (a) Before the public hearing required under Section 10-5-108, the town council:

4588 (i) shall review, consider, and tentatively adopt the tentative budget in any regular  
4589 meeting or special meeting called for that purpose; and

4590 (ii) may amend or revise the tentative budget.

4591 (b) At the meeting at which the town council adopts the tentative budget, the council  
4592 shall establish the time and place of the public hearing required under Section 10-5-108.

4593 (4) (a) If within any enterprise utility fund, allocations or transfers that are not

4594 reasonable allocations of costs between funds are included in a tentative budget, a written  
4595 notice of the date, time, place, and purpose of the hearing shall be mailed to utility fund  
4596 customers at least seven days before the hearing.

4597 (b) The purpose portion of the notice shall identify:

4598 (i) the enterprise utility fund from which money is being transferred;

4599 (ii) the amount being transferred; and

4600 (iii) the fund to which the money is being transferred.

4601 Section 143. Section **10-5-114** is amended to read:

4602 **10-5-114. Appropriations limited to estimated revenue.**

4603 The council [~~shall not~~] may not make any appropriation in the final budget of any fund  
4604 in excess of the estimated expendable revenue for the budget year of such fund.

4605 Section 144. Section **10-5-115** is amended to read:

4606 **10-5-115. Expenditures limited to appropriations -- Obligations in excess invalid**  
4607 **-- Processing claims required.**

4608 Town officers [~~shall not~~] may not make or incur expenditures or encumbrances in  
4609 excess of total appropriations for any department in the budget as adopted or as subsequently  
4610 amended. Any obligation contracted by any such officer [~~shall not~~] may not be or become  
4611 valid or enforceable against the town. No check or warrant to cover any claim against any  
4612 appropriation shall be drawn until the claim has been processed as provided by this chapter.

4613 Section 145. Section **10-6-111** is amended to read:

4614 **10-6-111. Tentative budget to be prepared -- Contents -- Estimate of**  
4615 **expenditures -- Budget message -- Review by governing body.**

4616 (1) (a) On or before the first regularly scheduled meeting of the governing body in the  
4617 last May of the current period, the budget officer shall prepare for the ensuing fiscal period, on  
4618 forms provided by the state auditor, and file with the governing body, a tentative budget for  
4619 each fund for which a budget is required.

4620 (b) The tentative budget of each fund shall set forth in tabular form:

4621 (i) the actual revenues and expenditures in the last completed fiscal period;

4622 (ii) the budget estimates for the current fiscal period;

4623 (iii) the actual revenues and expenditures for a period of 6 to 21 months, as

4624 appropriate, of the current fiscal period;

4625 (iv) the estimated total revenues and expenditures for the current fiscal period;

4626 (v) the budget officer's estimates of revenues and expenditures for the budget period,

4627 computed as provided in Subsection (1)(c); and

4628 (vi) if the governing body elects, the actual performance experience to the extent

4629 established by Section 10-6-154 and available in work units, unit costs, man hours, or man

4630 years for each budgeted fund on an actual basis for the last completed fiscal period, and

4631 estimated for the current fiscal period and for the ensuing budget period.

4632 (c) (i) In making estimates of revenues and expenditures under Subsection (1)(b)(v),

4633 the budget officer shall estimate:

4634 (A) on the basis of demonstrated need, the expenditures for the budget period, after:

4635 (I) hearing each department head; and

4636 (II) reviewing the budget requests and estimates of the department heads; and

4637 (B) (I) the amount of revenue available to serve the needs of each fund;

4638 (II) the portion of revenue to be derived from all sources other than general property

4639 taxes; and

4640 (III) the portion of revenue that ~~must~~ shall be derived from general property taxes.

4641 (ii) The budget officer may revise any department's estimate under Subsection

4642 (1)(c)(i)(A)(II) that the officer considers advisable for the purpose of presenting the budget to

4643 the governing body.

4644 (iii) From the estimate made under Subsection (1)(c)(i)(B)(III), the budget officer shall

4645 compute and disclose in the budget the lowest rate of property tax levy that will raise the

4646 required amount of revenue, calculating the levy upon the latest taxable value.

4647 (2) (a) Each tentative budget, when filed by the budget officer with the governing

4648 body, shall contain the estimates of expenditures submitted by department heads, together with

4649 specific work programs and such other supporting data as this chapter requires or the

4650 governing body may request. Each city of the first or second class shall, and a city of the  
4651 third, fourth, or fifth class may, submit a supplementary estimate of all capital projects which  
4652 each department head believes should be undertaken within the next three succeeding years.

4653 (b) Each tentative budget submitted by the budget officer to the governing body shall  
4654 be accompanied by a budget message, which shall explain the budget, contain an outline of  
4655 the proposed financial policies of the city for the budget period, and shall describe the  
4656 important features of the budgetary plan. It shall set forth the reasons for salient changes from  
4657 the previous fiscal period in appropriation and revenue items and shall explain any major  
4658 changes in financial policy.

4659 (3) Each tentative budget shall be reviewed, considered, and tentatively adopted by the  
4660 governing body in any regular meeting or special meeting called for the purpose and may be  
4661 amended or revised in such manner as is considered advisable prior to public hearings, except  
4662 that no appropriation required for debt retirement and interest or reduction of any existing  
4663 deficits pursuant to Section 10-6-117, or otherwise required by law or ordinance, may be  
4664 reduced below the minimums so required.

4665 (4) (a) If the municipality is acting pursuant to Section 10-2-120, the tentative budget  
4666 shall:

- 4667 (i) be submitted to the governing body-elect as soon as practicable; and
- 4668 (ii) cover each fund for which a budget is required from the date of incorporation to  
4669 the end of the fiscal year.

4670 (b) The governing body shall substantially comply with all other provisions of this  
4671 chapter, and the budget shall be passed upon incorporation.

4672 Section 146. Section **10-6-116** is amended to read:

4673 **10-6-116. Accumulated fund balances -- Limitations -- Excess balances --**  
4674 **Unanticipated excess of revenues -- Reserves for capital improvements.**

4675 (1) Cities are permitted to accumulate retained earnings or fund balances, as  
4676 appropriate, in any fund. With respect to the General Fund only, any accumulated fund  
4677 balance is restricted to the following purposes:

4678 (a) to provide working capital to finance expenditures from the beginning of the  
4679 budget period until general property taxes, sales taxes, or other applicable revenues are  
4680 collected, thereby reducing the amount which the city must borrow during the period, but this  
4681 Subsection (1)(a) does not permit the appropriation of any fund balance for budgeting  
4682 purposes except as provided in Subsection (4);

4683 (b) to provide a resource to meet emergency expenditures under Section 10-6-129; and

4684 (c) to cover a pending year-end excess of expenditures over revenues from an  
4685 unavoidable shortfall in revenues. This provision does not permit the appropriation of any  
4686 fund balance to avoid an operating deficit during any budget period except as provided under  
4687 Subsection (4), or for emergency purposes under Section 10-6-129.

4688 (2) The accumulation of a fund balance in the General Fund [~~shall not~~] may not  
4689 exceed 18% of the total estimated revenue of the General Fund.

4690 (3) If the fund balance at the close of any fiscal period exceeds the amount permitted  
4691 under Subsection (2), the excess shall be appropriated in the manner provided in Section  
4692 10-6-117.

4693 (4) Any fund balance in excess of 5% of the total revenues of the General Fund may  
4694 be utilized for budget purposes.

4695 (5) (a) Within a capital improvements fund the governing body may, in any budget  
4696 period, appropriate from estimated revenue or fund balance to a reserve for capital  
4697 improvements for the purpose of financing future specific capital improvements, under a  
4698 formal long-range capital plan adopted by the governing body.

4699 (b) The reserves may accumulate from fiscal period to fiscal period until the  
4700 accumulated total is sufficient to permit economical expenditure for the specified purposes.

4701 (c) Disbursements from these reserves shall be made only by transfer to a revenue or  
4702 transfer account within the capital improvements fund, under a budget appropriation in a  
4703 budget for the fund adopted in the manner provided by this chapter.

4704 (d) Expenditures from the above appropriation budget accounts shall conform to all  
4705 requirements of this chapter relating to execution and control of budgets.

4706 Section 147. Section **10-6-123** is amended to read:

4707 **10-6-123. Expenditures or encumbrances in excess of appropriations prohibited**  
4708 **-- Processing claims.**

4709 City officers [~~shall not~~] may not make or incur expenditures or encumbrances in excess  
4710 of total appropriations for any department in the budget as adopted or as subsequently  
4711 amended. Any obligation contracted by any such officer [~~shall not~~] may not be or become  
4712 valid or enforceable against the city. No check or warrant to cover any claim against any  
4713 appropriation shall be drawn until the claim has been processed as provided by this chapter.

4714 Section 148. Section **10-6-159** is amended to read:

4715 **10-6-159. Financial administration ordinance -- Provisions.**

4716 The financial administration ordinances adopted pursuant to Section 10-6-158 shall  
4717 provide for the following:

4718 (1) a maximum sum over which all purchases may not be made without the approval  
4719 of the mayor in the council-mayor optional form of government or the governing body in other  
4720 cities; however, this section [~~shall not~~] does not prevent the mayor in the council-mayor  
4721 optional form of government or the governing body in other cities from approving all or part of  
4722 a list of verified claims, including a specific claim in an amount in excess of the stated  
4723 maximum, where certified by the appropriate financial officer or officers of the city;

4724 (2) that the financial officer be bonded for a reasonable amount; and

4725 (3) such other provisions as the governing body may deem advisable.

4726 Section 149. Section **10-7-4** is amended to read:

4727 **10-7-4. Water supply -- Acquisition -- Condemnation -- Protest -- Special**  
4728 **election -- Determination of just compensation.**

4729 (1) The board of commissioners, city council or board of trustees of any city or town  
4730 may acquire, purchase or lease all or any part of any water, waterworks system, water supply  
4731 or property connected therewith, and whenever the governing body of a city or town shall  
4732 deem it necessary for the public good such city or town may bring condemnation proceedings  
4733 to acquire the same; provided, that if within 30 days after the passage and publication of a

4734 resolution or ordinance for the purchase or lease or condemnation herein provided for  
4735 one-third of the resident taxpayers of the city or town, as shown by the assessment roll, shall  
4736 protest against the purchase, lease or condemnation proceedings contemplated, such proposed  
4737 purchase, lease or condemnation shall be referred to a special election, and if confirmed by a  
4738 majority vote thereat, shall take effect; otherwise it shall be void.

4739 (2) In all condemnation proceedings the value of land affected by the taking [~~must~~]  
4740 shall be considered in connection with the water or water rights taken for the purpose of  
4741 supplying the city or town or the inhabitants thereof with water.

4742 (3) In determining just compensation in a condemnation proceeding under this section  
4743 in a municipality located in a county of the first class where a determination of market value  
4744 of what is proposed to be taken is impractical because there is no meaningful market for what  
4745 is proposed to be taken, the value shall be:

4746 (a) presumed to be the amount the owner paid to acquire ownership of what is  
4747 proposed to be taken, as adjusted by a change in value due to post-acquisition deterioration  
4748 and any other factor reasonably and equitably bearing on the value of what is proposed to be  
4749 taken; and

4750 (b) determined by applying equitable considerations including:

4751 (i) whether the owner will be unjustly enriched;

4752 (ii) whether the owner acquired the property by exaction or similar method; and

4753 (iii) the extent to which the consideration the owner provided in acquiring the property  
4754 consists of an obligation to maintain the property and whether that obligation will be assumed  
4755 by the municipality because of the condemnation.

4756 (4) This section may not be construed to provide the basis for a municipality's  
4757 condemnation of a political subdivision of the state or of the political subdivision's property or  
4758 holdings.

4759 Section 150. Section **10-7-5** is amended to read:

4760 **10-7-5. Limitations on lease or purchase.**

4761 It [~~shall not be~~] is not lawful for any city or town to lease or purchase any part of such

4762 waterworks less than the whole, or to lease the same, unless the contract therefor shall provide  
4763 that the city or town shall have control thereof and that the net revenues therefrom shall be  
4764 divided proportionately to the interests of the parties thereto; said contract shall also provide a  
4765 list of water rates to be enforced during the term of such contract.

4766 Section 151. Section **10-7-18** is amended to read:

4767 **10-7-18. Disposition of money received.**

4768 (1) All money received from the sale of property under Sections 10-7-15 through  
4769 10-7-17 shall be kept in a separate fund, and ~~shall not~~ may not be expended, or mixed with  
4770 other funds of the city or town, until all bonds and other indebtedness issued for the purchase  
4771 or construction of the plant or works, together with accumulated interest thereon, have first  
4772 been paid.

4773 (2) If the property sold brings an amount in excess of the outstanding bonds and other  
4774 indebtedness issued for the purchase or construction of the property sold, the excess shall be  
4775 deposited in a bank in this state under direction of the municipal legislative body, and may not  
4776 thereafter be expended except for some municipal purpose by authority given by the registered  
4777 voters of the city or town at a general or special election called and conducted in the manner  
4778 set forth in Sections 10-7-7 and 10-7-8.

4779 Section 152. Section **10-7-32** is amended to read:

4780 **10-7-32. Actions to recover taxes.**

4781 It shall also be competent for any municipality to bring a civil action against any party  
4782 owning or operating any such railway liable to pay such taxes to recover the amount thereof,  
4783 or any part thereof, delinquent and unpaid, in any court having jurisdiction of the amount, and  
4784 obtain judgment and have execution therefor, and no property, real or personal, shall be  
4785 exempt from any such execution; provided, that real estate ~~shall not~~ may not be levied upon  
4786 by execution except by execution out of the district court on judgment therein, or transcript of  
4787 judgment filed therein, as is now or hereafter may be provided by law. No defense shall be  
4788 allowed in any such civil action except such as goes to the groundwork, equity and justice of  
4789 the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such

4790 special tax shall be shown to be invalid, unjust or inequitable, judgment shall be rendered for  
4791 such amount as is just and equitable.

4792 Section 153. Section **10-7-71** is amended to read:

4793 **10-7-71. Corporate violation -- Summons -- Time and manner of service.**

4794 The summons and copy of complaint [~~must~~] shall be served at least 24 hours before the  
4795 hour of appearance fixed therein by delivering to and leaving a copy thereof with the president  
4796 or other head of the corporation, or the secretary, the cashier, or the managing or process agent  
4797 thereof, and by showing to him the original summons.

4798 Section 154. Section **10-7-72** is amended to read:

4799 **10-7-72. Appearance by agent of corporation -- Bench warrant for default.**

4800 At the time appointed in the summons, the corporation [~~must~~] shall appear by agent or  
4801 attorney and plead thereto the same as a natural person. In case no appearance is made on or  
4802 before the hour appointed, the court may issue a bench warrant for the person served as the  
4803 officer or agent of the corporation, requiring him to be brought forthwith before the court to  
4804 plead on its behalf.

4805 Section 155. Section **10-7-73** is amended to read:

4806 **10-7-73. Corporate violation -- Hearing -- Penalty imposed to be a fine.**

4807 After the plea of the corporation is entered the court [~~must~~] shall fix a time for the  
4808 hearing of the cause, and thereafter the proceedings therein shall be the same as in the cases of  
4809 natural persons charged with violating a city or town ordinance, except that in cases of  
4810 conviction the penalty imposed in all instances shall be by way of fine.

4811 Section 156. Section **10-7-85** is amended to read:

4812 **10-7-85. Support of the arts.**

4813 The governing body of any municipality may provide for and appropriate funds for the  
4814 support of the arts, including [~~but not limited to~~] music, dance, theatre, crafts and visual, folk  
4815 and literary art, for the purpose of enriching the lives of its residents and may establish  
4816 guidelines for the support of the arts.

4817 Section 157. Section **10-8-15** is amended to read:

4818           **10-8-15. Waterworks -- Construction -- Extraterritorial jurisdiction.**

4819           They may construct or authorize the construction of waterworks within or without the  
4820 city limits, and for the purpose of maintaining and protecting the same from injury and the  
4821 water from pollution their jurisdiction shall extend over the territory occupied by such works,  
4822 and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the  
4823 construction, maintenance and operation of the same, and over the stream or source from  
4824 which the water is taken, for 15 miles above the point from which it is taken and for a distance  
4825 of 300 feet on each side of such stream and over highways along such stream or watercourse  
4826 within said 15 miles and said 300 feet; provided, that the jurisdiction of cities of the first class  
4827 shall be over the entire watershed, except that livestock shall be permitted to graze beyond one  
4828 thousand feet from any such stream or source; and provided further, that each city of the first  
4829 class shall provide a highway in and through its corporate limits, and so far as its jurisdiction  
4830 extends, which [~~shall not~~] may not be closed to cattle, horses, sheep or hogs driven through  
4831 any such city, or through any territory adjacent thereto over which such city has jurisdiction,  
4832 but the board of commissioners of such city may enact ordinances placing under police  
4833 regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any  
4834 territory adjacent thereto over which it has jurisdiction. They may enact all ordinances and  
4835 regulations necessary to carry the power herein conferred into effect, and are authorized and  
4836 empowered to enact ordinances preventing pollution or contamination of the streams or  
4837 watercourses from which the inhabitants of cities derive their water supply, in whole or in part,  
4838 for domestic and culinary purposes, and may enact ordinances prohibiting or regulating the  
4839 construction or maintenance of any closet, privy, outhouse or urinal within the area over which  
4840 the city has jurisdiction, and provide for permits for the construction and maintenance of the  
4841 same. In granting such permits they may annex thereto such reasonable conditions and  
4842 requirements for the protection of the public health as they deem proper, and may, if deemed  
4843 advisable, require that all closets, privies and urinals along such streams shall be provided with  
4844 effective septic tanks or other germ-destroying instrumentalities.

4845           Section 158. Section **10-8-16** is amended to read:

4846           **10-8-16. Watercourses leading to and within city -- Mill privileges.**

4847           They may control the water and watercourses leading to the city and regulate and  
4848 control the watercourses and mill privileges within the city; provided, that the control [~~shall~~  
4849 ~~not~~] may not be exercised to the injury of any right already acquired by actual owners.

4850           Section 159. Section **10-8-17** is amended to read:

4851           **10-8-17. City may act as distributing agent -- Collection of operating costs from**  
4852 **users.**

4853           When the governing body of a city is acting as distributing agent of water, not the  
4854 property of the corporation, outside of or within its corporate limits, the governing body may  
4855 annually prior to the commencement of the irrigation season determine and fix the sum  
4856 deemed necessary to meet the expense of the current year for the purpose of controlling,  
4857 regulating and distributing such water and constructing and keeping in repair the necessary  
4858 means for diverting, conveying and distributing the same, and they may collect such sum from  
4859 the persons entitled to the use of such water, pro rata according to acreage, whether the  
4860 acreage is situate within or without the corporate boundary of the city; provided, that the funds  
4861 so derived [~~shall not~~] may not be appropriated or used for any other purpose, and in the event  
4862 that a greater sum is collected in any one year than is necessary for said purpose, the excess  
4863 thereof shall be carried to the account of the year next following and applied to the purpose for  
4864 which it was collected. Such sum shall be fixed and collected as provided by ordinance, and  
4865 until collected the same shall be a lien on such water rights and the land irrigated thereby.

4866           Section 160. Section **10-8-33** is amended to read:

4867           **10-8-33. Railroads -- Tracks and franchises.**

4868           They may permit, regulate or prohibit the locating, constructing or laying of the tracks  
4869 of any railroad, or tramway in any street, alley or public place; and may by ordinance grant  
4870 franchises to railroad and street railroad companies, and to union railroad depot companies, to  
4871 lay, maintain and operate in any street or part or parts of streets or other public places tracks  
4872 therefor, but such permission [~~shall not~~] may not be exclusive or for a longer time than one  
4873 hundred years.

4874 Section 161. Section **10-8-36** is amended to read:

4875 **10-8-36. Flagmen -- Grade crossings -- Drains along tracks.**

4876 They may require railroad companies to keep flagmen at railroad crossings of streets,  
4877 or otherwise provide protection against injury to persons or property; may compel railroad and  
4878 street railroad companies to raise or lower their tracks to conform to any grade which at any  
4879 time may be established by the city, so that such tracks may be crossed at any place on any  
4880 street, alley or highway; may compel railway companies to make and keep open, and keep in  
4881 repair, ditches, drains, sewers and culverts along and under their tracks, so that the natural or  
4882 artificial drainage of adjacent property [~~shall not~~] may not be impaired.

4883 Section 162. Section **10-8-58.5** is amended to read:

4884 **10-8-58.5. Contracting for management, maintenance, operation, or**  
4885 **construction of jails.**

4886 (1) (a) The governing body of a city or town may contract with private contractors for  
4887 management, maintenance, operation, and construction of city jails.

4888 (b) The governing body may include a provision in the contract that requires that any  
4889 jail facility meet any federal, state, or local standards for the construction of jails.

4890 (2) If the governing body contracts only for the management, maintenance, or  
4891 operation of a jail, the governing body shall include provisions in the contract that:

4892 (a) require the private contractor to post a performance bond in the amount set by the  
4893 governing body;

4894 (b) establish training standards that [~~must~~] shall be met by jail personnel;

4895 (c) require the private contractor to provide and fund training for jail personnel so that  
4896 the personnel meet the standards established in the contract and any other federal, state, or  
4897 local standards for the operation of jails and the treatment of jail prisoners;

4898 (d) require the private contractor to indemnify the city or town for errors, omissions,  
4899 defalcations, and other activities committed by the private contractor that result in liability to  
4900 the city or town;

4901 (e) require the private contractor to show evidence of liability insurance protecting the

4902 city or town and its officers, employees, and agents from liability arising from the  
4903 construction, operation, or maintenance of the jail, in an amount not less than those specified  
4904 in Title 63G, Chapter 7, Governmental Immunity Act of Utah;

4905 (f) require the private contractor to:

4906 (i) receive all prisoners committed to the jail by competent authority; and

4907 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed  
4908 by the governing body; and

4909 (g) prohibit the use of inmates by the private contractor for private business purposes  
4910 of any kind.

4911 (3) A contractual provision requiring the private contractor to maintain liability  
4912 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,  
4913 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on  
4914 damages recoverable from a governmental entity or its employees established by that chapter.

4915 Section 163. Section **10-9a-403** is amended to read:

4916 **10-9a-403. Plan preparation.**

4917 (1) (a) The planning commission shall provide notice, as provided in Section  
4918 10-9a-203, of its intent to make a recommendation to the municipal legislative body for a  
4919 general plan or a comprehensive general plan amendment when the planning commission  
4920 initiates the process of preparing its recommendation.

4921 (b) The planning commission shall make and recommend to the legislative body a  
4922 proposed general plan for the area within the municipality.

4923 (c) The plan may include areas outside the boundaries of the municipality if, in the  
4924 planning commission's judgment, those areas are related to the planning of the municipality's  
4925 territory.

4926 (d) Except as otherwise provided by law or with respect to a municipality's power of  
4927 eminent domain, when the plan of a municipality involves territory outside the boundaries of  
4928 the municipality, the municipality may not take action affecting that territory without the  
4929 concurrence of the county or other municipalities affected.

4930 (2) (a) At a minimum, the proposed general plan, with the accompanying maps,  
4931 charts, and descriptive and explanatory matter, shall include the planning commission's  
4932 recommendations for the following plan elements:

4933 (i) a land use element that:

4934 (A) designates the long-term goals and the proposed extent, general distribution, and  
4935 location of land for housing, business, industry, agriculture, recreation, education, public  
4936 buildings and grounds, open space, and other categories of public and private uses of land as  
4937 appropriate; and

4938 (B) may include a statement of the projections for and standards of population density  
4939 and building intensity recommended for the various land use categories covered by the plan;

4940 (ii) a transportation and traffic circulation element consisting of the general location  
4941 and extent of existing and proposed freeways, arterial and collector streets, mass transit, and  
4942 any other modes of transportation that the planning commission considers appropriate, all  
4943 correlated with the population projections and the proposed land use element of the general  
4944 plan; and

4945 (iii) for cities, an estimate of the need for the development of additional moderate  
4946 income housing within the city, and a plan to provide a realistic opportunity to meet estimated  
4947 needs for additional moderate income housing if long-term projections for land use and  
4948 development occur.

4949 (b) In drafting the moderate income housing element, the planning commission:

4950 (i) shall consider the Legislature's determination that cities [~~should~~] shall facilitate a  
4951 reasonable opportunity for a variety of housing, including moderate income housing:

4952 (A) to meet the needs of people desiring to live there; and

4953 (B) to allow persons with moderate incomes to benefit from and fully participate in all  
4954 aspects of neighborhood and community life; and

4955 (ii) may include an analysis of why the recommended means, techniques, or  
4956 combination of means and techniques provide a realistic opportunity for the development of  
4957 moderate income housing within the planning horizon, which means or techniques may

4958 include a recommendation to:

4959           (A) rezone for densities necessary to assure the production of moderate income  
4960 housing;

4961           (B) facilitate the rehabilitation or expansion of infrastructure that will encourage the  
4962 construction of moderate income housing;

4963           (C) encourage the rehabilitation of existing uninhabitable housing stock into moderate  
4964 income housing;

4965           (D) consider general fund subsidies to waive construction related fees that are  
4966 otherwise generally imposed by the city;

4967           (E) consider utilization of state or federal funds or tax incentives to promote the  
4968 construction of moderate income housing;

4969           (F) consider utilization of programs offered by the Utah Housing Corporation within  
4970 that agency's funding capacity; and

4971           (G) consider utilization of affordable housing programs administered by the  
4972 Department of Community and Culture.

4973           (c) In drafting the land use element, the planning commission shall:

4974           (i) identify and consider each agriculture protection area within the municipality; and

4975           (ii) avoid proposing a use of land within an agriculture protection area that is  
4976 inconsistent with or detrimental to the use of the land for agriculture.

4977           (3) The proposed general plan may include:

4978           (a) an environmental element that addresses:

4979           (i) the protection, conservation, development, and use of natural resources, including  
4980 the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals,  
4981 and other natural resources; and

4982           (ii) the reclamation of land, flood control, prevention and control of the pollution of  
4983 streams and other waters, regulation of the use of land on hillsides, stream channels and other  
4984 environmentally sensitive areas, the prevention, control, and correction of the erosion of soils,  
4985 protection of watersheds and wetlands, and the mapping of known geologic hazards;

4986 (b) a public services and facilities element showing general plans for sewage, water,  
4987 waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them,  
4988 police and fire protection, and other public services;

4989 (c) a rehabilitation, redevelopment, and conservation element consisting of plans and  
4990 programs for:

4991 (i) historic preservation;

4992 (ii) the diminution or elimination of blight; and

4993 (iii) redevelopment of land, including housing sites, business and industrial sites, and  
4994 public building sites;

4995 (d) an economic element composed of appropriate studies and forecasts, as well as an  
4996 economic development plan, which may include review of existing and projected municipal  
4997 revenue and expenditures, revenue sources, identification of basic and secondary industry,  
4998 primary and secondary market areas, employment, and retail sales activity;

4999 (e) recommendations for implementing all or any portion of the general plan,  
5000 including the use of land use ordinances, capital improvement plans, community development  
5001 and promotion, and any other appropriate action;

5002 (f) provisions addressing any of the matters listed in Subsection 10-9a-401(2); and

5003 (g) any other element the municipality considers appropriate.

5004 Section 164. Section **10-9a-509.5** is amended to read:

5005 **10-9a-509.5. Review for application completeness -- Substantive application**  
5006 **review -- Reasonable diligence required for determination of whether improvements or**  
5007 **warranty work meets standards -- Money damages claim prohibited.**

5008 (1) (a) Each municipality shall, in a timely manner, determine whether an application  
5009 is complete for the purposes of subsequent, substantive land use authority review.

5010 (b) After a reasonable period of time to allow the municipality diligently to evaluate  
5011 whether all objective ordinance-based application criteria have been met, if application fees  
5012 have been paid, the applicant may in writing request that the municipality provide a written  
5013 determination either that the application is:

5014 (i) complete for the purposes of allowing subsequent, substantive land use authority  
5015 review; or

5016 (ii) deficient with respect to a specific, objective, ordinance-based application  
5017 requirement.

5018 (c) Within 30 days of receipt of an applicant's request under this section, the  
5019 municipality shall either:

5020 (i) mail a written notice to the applicant advising that the application is deficient with  
5021 respect to a specified, objective, ordinance-based criterion, and stating that the application  
5022 [~~must~~] shall be supplemented by specific additional information identified in the notice; or

5023 (ii) accept the application as complete for the purposes of further substantive  
5024 processing by the land use authority.

5025 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application  
5026 shall be considered complete, for purposes of further substantive land use authority review.

5027 (e) (i) The applicant may raise and resolve in a single appeal any determination made  
5028 under this Subsection (1) to the appeal authority, including an allegation that a reasonable  
5029 period of time has elapsed under Subsection (1)(a).

5030 (ii) The appeal authority shall issue a written decision for any appeal requested under  
5031 this Subsection (1)(e).

5032 (f) (i) The applicant may appeal to district court the decision of the appeal authority  
5033 made under Subsection (1)(e).

5034 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of  
5035 the written decision.

5036 (2) (a) Each land use authority shall substantively review a complete application and  
5037 an application considered complete under Subsection (1)(d), and shall approve or deny each  
5038 application with reasonable diligence.

5039 (b) After a reasonable period of time to allow the land use authority to consider an  
5040 application, the applicant may in writing request that the land use authority take final action  
5041 within 45 days from date of service of the written request.

5042 (c) The land use authority shall take final action, approving or denying the application  
5043 within 45 days of the written request.

5044 (d) If the land use authority denies an application processed under the mandates of  
5045 Subsection (2)(b), or if the applicant has requested a written decision in the application, the  
5046 land use authority shall include its reasons for denial in writing, on the record, which may  
5047 include the official minutes of the meeting in which the decision was rendered.

5048 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may  
5049 appeal this failure to district court within 30 days of the date on which the land use authority  
5050 [~~should have taken~~] is required to take final action under Subsection (2)(c).

5051 (3) (a) With reasonable diligence, each land use authority shall determine whether the  
5052 installation of required subdivision improvements or the performance of warranty work meets  
5053 the municipality's adopted standards.

5054 (b) (i) An applicant may in writing request the land use authority to accept or reject  
5055 the applicant's installation of required subdivision improvements or performance of warranty  
5056 work.

5057 (ii) The land use authority shall accept or reject subdivision improvements within 15  
5058 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as  
5059 practicable after that 15-day period if inspection of the subdivision improvements is impeded  
5060 by winter weather conditions.

5061 (iii) The land use authority shall accept or reject the performance of warranty work  
5062 within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as  
5063 soon as practicable after that 45-day period if inspection of the warranty work is impeded by  
5064 winter weather conditions.

5065 (c) If a land use authority determines that the installation of required subdivision  
5066 improvements or the performance of warranty work does not meet the municipality's adopted  
5067 standards, the land use authority shall comprehensively and with specificity list the reasons for  
5068 its determination.

5069 (4) Subject to Section 10-9a-509, nothing in this section and no action or inaction of

5070 the land use authority relieves an applicant's duty to comply with all applicable substantive  
5071 ordinances and regulations.

5072 (5) There shall be no money damages remedy arising from a claim under this section.

5073 Section 165. Section **10-9a-514** is amended to read:

5074 **10-9a-514. Manufactured homes.**

5075 (1) For purposes of this section, a manufactured home is the same as defined in  
5076 Section 58-56-3, except that the manufactured home [~~must~~] shall be attached to a permanent  
5077 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and  
5078 frost protection in compliance with the applicable building code. All appendages, including  
5079 carports, garages, storage buildings, additions, or alterations [~~must~~] shall be built in  
5080 compliance with the applicable building code.

5081 (2) A manufactured home may not be excluded from any land use zone or area in  
5082 which a single-family residence would be permitted, provided the manufactured home  
5083 complies with all local land use ordinances, building codes, and any restrictive covenants,  
5084 applicable to a single family residence within that zone or area.

5085 (3) A municipality may not:

5086 (a) adopt or enforce an ordinance or regulation that treats a proposed development that  
5087 includes manufactured homes differently than one that does not include manufactured homes;  
5088 or

5089 (b) reject a development plan based on the fact that the development is expected to  
5090 contain manufactured homes.

5091 Section 166. Section **10-9a-519** is amended to read:

5092 **10-9a-519. Elderly residential facilities in areas zoned exclusively for**  
5093 **single-family dwellings.**

5094 (1) For purposes of this section:

5095 (a) no person who is being treated for alcoholism or drug abuse may be placed in a  
5096 residential facility for elderly persons; and

5097 (b) placement in a residential facility for elderly persons shall be on a strictly voluntary

5098 basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a  
5099 correctional institution.

5100 (2) Subject to the granting of a conditional use permit, a residential facility for elderly  
5101 persons shall be allowed in any zone that is regulated to permit exclusively single-family  
5102 dwelling use, if that facility:

5103 (a) conforms to all applicable health, safety, land use, and building codes;

5104 (b) is capable of use as a residential facility for elderly persons without structural or  
5105 landscaping alterations that would change the structure's residential character; and

5106 (c) conforms to the municipality's criteria, adopted by ordinance, governing the  
5107 location of residential facilities for elderly persons in areas zoned to permit exclusively  
5108 single-family dwellings.

5109 (3) A municipality may, by ordinance, provide that no residential facility for elderly  
5110 persons be established within three-quarters mile of another existing residential facility for  
5111 elderly persons or residential facility for persons with a disability.

5112 (4) The use granted and permitted by this section is nontransferable and terminates if  
5113 the structure is devoted to a use other than as a residential facility for elderly persons or if the  
5114 structure fails to comply with applicable health, safety, and building codes.

5115 (5) (a) Municipal ordinances shall prohibit discrimination against elderly persons and  
5116 against residential facilities for elderly persons.

5117 (b) The decision of a municipality regarding the application for a permit by a  
5118 residential facility for elderly persons [~~must~~] shall be based on legitimate land use criteria and  
5119 may not be based on the age of the facility's residents.

5120 (6) The requirements of this section that a residential facility for elderly persons obtain  
5121 a conditional use permit or other permit do not apply if the facility meets the requirements of  
5122 existing land use ordinances that allow a specified number of unrelated persons to live  
5123 together.

5124 Section 167. Section **10-11-2** is amended to read:

5125 **10-11-2. Notice to property owners.**

5126           It shall be the duty of such city inspector to make careful examination and  
5127 investigation, as may be provided by ordinance, of the growth and spread of such injurious  
5128 and noxious weeds, and of garbage, refuse or unsightly or deleterious objects or structures; and  
5129 it shall be his duty to ascertain the names of the owners and descriptions of the premises where  
5130 such weeds, garbage, refuse, objects or structures exist, and to serve notice in writing upon the  
5131 owner or occupant of such land, either personally or by mailing notice, postage prepaid,  
5132 addressed to the owner or occupant at the last known post-office address as disclosed by the  
5133 records of the county assessor, requiring such owner or occupant, as the case may be, to  
5134 eradicate, or destroy and remove, the same within such time as the inspector may designate,  
5135 which [~~shall not~~] may not be less than 10 days from the date of service of such notice. One  
5136 notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed  
5137 growth during that year. The inspector shall make proof of service of such notice under oath,  
5138 and file the same in the office of the county treasurer.

5139           Section 168. Section **10-15-4** is amended to read:

5140           **10-15-4. Powers of legislative body of municipality.**

5141           The legislative body of the municipalities of this state shall have the power:

- 5142           (1) to establish pedestrian malls;
- 5143           (2) to prohibit, in whole or in part, vehicular traffic on a pedestrian mall;
- 5144           (3) to pay from the general funds of the municipality, or from other available money,  
5145 or from the proceeds of assessments levied on land benefited by the establishment of a  
5146 pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of  
5147 the establishment of the pedestrian mall;
- 5148           (4) to acquire, construct, and maintain on the municipality's streets which are  
5149 established as a pedestrian mall, improvements of any kind or nature necessary or convenient  
5150 to the operation of such streets as a pedestrian mall, [~~included but not limited to~~] including  
5151 paving, sidewalks, curbs, gutters, sewers, drainage works, lighting facilities, fire protection  
5152 facilities, flood protection facilities, water distribution facilities, vehicular parking areas,  
5153 retaining walls, landscaping, tree planting, statuaries, fountains, decorative structures,

5154 benches, rest rooms, child care facilities, display facilities, information booths, public  
5155 assembly facilities, and other structures, works or improvements necessary or convenient to  
5156 serve members of the public using such pedestrian malls, including the reconstruction or  
5157 relocation of existing municipally owned works, improvements, or facilities on such municipal  
5158 streets; which foregoing changes or any portions thereof, are referred to in this act as  
5159 "improvements";

5160 (5) to pay from the general funds of the municipality or other available moneys, or  
5161 from the proceeds of assessments levied on property benefited by any such improvements, or  
5162 from the proceeds of special improvement warrants or bonds, the whole or any portion of the  
5163 costs of acquisition, construction, and maintenance of such improvements in accordance with  
5164 the provisions of Title 11, Chapter 42, Assessment Area Act, relating to special improvement  
5165 assessments; and

5166 (6) to do any and all other acts or things necessary or convenient for the  
5167 accomplishment of the purposes of this chapter.

5168 Section 169. Section **11-8-1** is amended to read:

5169 **11-8-1. Contracts for joint use, operation, and ownership of sewage lines and**  
5170 **sewage treatment and disposal systems.**

5171 Any county, incorporated municipality, improvement district, taxing district or other  
5172 political subdivision of the state of Utah which now or hereafter owns and operates sanitary  
5173 sewer facilities (each of which is hereinafter referred to as a "public owner") is hereby granted  
5174 authority:

5175 ~~[(a)]~~ (1) To enter into long-term contracts with any other public owner or public  
5176 owners pursuant to which sewage lines, sewage treatment and sewage disposal facilities, or  
5177 any part thereof, of one or more public owners shall be available for collection, treatment and  
5178 disposal, or any part thereof, of the sewage collected by one or more other public owners, or of  
5179 sewage collected jointly, pursuant to such terms and conditions and for such consideration as  
5180 may be provided in such contracts. Annual payments due by any such public owner for  
5181 services received under any such contract [~~shall not~~] may not be construed to be an

5182 indebtedness of such public owner within the meaning of any constitutional or statutory  
5183 restriction, and no election shall be necessary for the authorization of such contract. Any  
5184 public owner or owners so contracting to make available sewage collection, sewage treatment  
5185 and disposal facilities, or any part thereof, may in any such contract agree to make available to  
5186 such other public owner or owners a specified part of its facilities, without regard to its future  
5187 need of such specified part for its own use, and may in such contract agree to increase the  
5188 capacity of its facilities from time to time in the future if necessary in order to take care of its  
5189 own needs and to perform its obligations to the other parties to such contract.

5190       ~~[(b)]~~ (2) To construct or otherwise acquire joint interests in, and to own jointly, sewer  
5191 lines, sewage treatment and disposal facilities, or any part thereof for their common use. To  
5192 such end, any public owner may sell to any other public owner or owners a partial interest or  
5193 interests in any of its sewer lines, sewage treatment and disposal facilities. Any public owner  
5194 may issue its bonds for the purpose of acquiring such joint interest in sewer lines, sewage  
5195 treatment and disposal facilities, or any part thereof, whether such joint interest is to be  
5196 acquired through the construction of new facilities or the purchase of such interest in existing  
5197 facilities, which bonds may be issued under the provisions and in the manner provided in any  
5198 available law authorizing the issuance of bonds for the acquisition of sanitary sewer facilities  
5199 by such public owner.

5200       ~~[(c)]~~ (3) To operate jointly with any other public owner or owners, sewer lines, sewage  
5201 treatment and disposal facilities, or any part thereof, which they may own jointly.

5202       Section 170. Section **11-13-309** is amended to read:

5203       **11-13-309. Venue for civil action -- No trial de novo.**

5204       (1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any  
5205 order of the board, or any alleviation contract, shall be brought only in the district court for the  
5206 county within which is located the candidate to which the order or contract pertains. If the  
5207 candidate is the state of Utah, the action shall be brought in the district court for Salt Lake  
5208 County. Any action brought in any judicial district shall be ordered transferred to the court  
5209 where venue is proper under this section.

5210 (2) In any civil action seeking to challenge, enforce, or otherwise review, any order of  
5211 the board, a trial de novo [~~shall not~~] may not be held. The matter shall be considered on the  
5212 record compiled before the board, and the findings of fact made by the board [~~shall not~~] may  
5213 not be set aside by the district court unless the board clearly abused its discretion.

5214 Section 171. Section **11-13-311** is amended to read:

5215 **11-13-311. Credit for impact alleviation payments against in lieu of ad valorem**  
5216 **property taxes -- Federal or state assistance.**

5217 (1) In consideration of the impact alleviation payments and means provided by the  
5218 project entity or other public agency pursuant to the contracts and determination orders, the  
5219 project entity or other public agency, as the case may be, shall be entitled to a credit against  
5220 the fees paid in lieu of ad valorem property taxes as provided by Section 11-13-302, ad  
5221 valorem property or other taxation by, or other payments in lieu of ad valorem property  
5222 taxation or other form of tax equivalent payments required by any candidate which is a party  
5223 to an impact alleviation contract or board order.

5224 (2) Each candidate may make application to any federal or state governmental  
5225 authority for any assistance that may be available from that authority to alleviate the impacts  
5226 to the candidate. To the extent that the impact was attributable to the project or to the facilities  
5227 providing additional project capacity, any assistance received from that authority shall be  
5228 credited to the alleviation obligation with respect to the project or the facilities providing  
5229 additional project capacity, as the case may be, in proportion to the percentage of impact  
5230 attributable to the project or facilities providing additional project capacity, but in no event  
5231 shall the candidate realize less revenues than would have been realized without receipt of any  
5232 assistance.

5233 (3) With respect to school districts the fee in lieu of ad valorem property tax for the  
5234 state minimum school program required to be paid by the project entity or other public agency  
5235 under Subsection 11-13-302(2)(b)(i) shall be treated as a separate fee and [~~shall not~~] does not  
5236 affect any credits for alleviation payments received by the school districts under Subsection  
5237 11-13-302(2)(b)(i), or Sections 11-13-305 and 11-13-306.

5238 Section 172. Section **11-14-302** is amended to read:

5239 **11-14-302. Resolution -- Negotiability -- Registration -- Maturity -- Interest --**  
5240 **Payment -- Redemption -- Combining issues -- Sale -- Financing plan.**

5241 (1) Bonds issued under this chapter shall be authorized by resolution of the governing  
5242 body, shall be fully negotiable for all purposes, may be made registrable as to principal alone  
5243 or as to principal and interest, shall mature at such time or times not more than 40 years from  
5244 their date, shall bear interest at such rate or rates, if any, shall be payable at such place or  
5245 places, shall be in such form, shall be executed in such manner, may be made redeemable prior  
5246 to maturity at such times and on such terms, shall be sold in such manner and at such prices,  
5247 either at, in excess of, or below face value, and generally shall be issued in such manner and  
5248 with such details as may be provided by resolution; it being the express intention of the  
5249 legislature that interest rate limitations elsewhere appearing in the laws of Utah [~~shall not~~] do  
5250 not apply to nor limit the rate of interest on bonds issued under this chapter. The resolution  
5251 shall specify either the rate or rates of interest, if any, on the bonds or specify the method by  
5252 which the interest rate or rates on the bonds may be determined while the bonds are  
5253 outstanding. If the resolution specifies a method by which interest on the bonds may be  
5254 determined, the resolution shall also specify the maximum rate of interest the bonds may bear.  
5255 Bonds voted for different purposes by separate propositions at the same or different bond  
5256 elections may in the discretion of the governing body be combined and offered for sale as one  
5257 issue of bonds. The resolution providing for this combination and the printed bonds for the  
5258 combined issue shall separately set forth the amount being issued for each of the purposes  
5259 provided for in each proposition submitted to the electors. If the local political subdivision  
5260 has retained a fiscal agent to assist and advise it with respect to the bonds and the fiscal agent  
5261 has received or is to receive a fee for such services, the bonds may be sold to the fiscal agent  
5262 but only if the sale is made pursuant to a sealed bid submitted by the fiscal agent at an  
5263 advertised public sale.

5264 (2) (a) All bonds shall be paid by the treasurer of the local political subdivision or the  
5265 treasurer's duly authorized agent on their respective maturity dates or on the dates fixed for the

5266 bonds redemption. All bond coupons, other than coupons cancelled because of the redemption  
5267 of the bonds to which they apply, shall similarly be paid on their respective dates or as soon  
5268 thereafter as the bonds or coupons are surrendered.

5269 (b) Upon payment of a bond or coupon, the treasurer of the local political subdivision  
5270 or the treasurer's duly authorized agent, shall perforate the bond or coupon with a device  
5271 suitable to indicate payment.

5272 (c) Any bonds or coupons which have been paid or cancelled may be destroyed by the  
5273 treasurer of the local political subdivision or by the treasurer's duly authorized agent.

5274 (3) Bonds, bond anticipation notes, or tax anticipation notes with maturity dates of  
5275 one year or less may be authorized by a local political subdivision from time to time pursuant  
5276 to a plan of financing adopted by the governing body. The plan of financing shall specify the  
5277 terms and conditions under which the bonds or notes may be issued, sold, and delivered, the  
5278 officers of the local political subdivision authorized to issue the bonds or notes, the maximum  
5279 amount of bonds or notes which may be outstanding at any one time, the source or sources of  
5280 payment of the bonds or notes, and all other details necessary for issuance of the bonds or  
5281 notes. Subject to the Constitution, the governing body of the local political subdivision may  
5282 include in the plan of financing the terms and conditions of agreements which may be entered  
5283 into by the local political subdivision with banking institutions for letters of credit or for  
5284 standby letters of credit to secure the bonds or notes, including payment from any legally  
5285 available source of fees, charges, or other amounts coming due under the agreements entered  
5286 into by the local political subdivision.

5287 Section 173. Section **11-14-308** is amended to read:

5288 **11-14-308. Special service district bonds secured by federal mineral lease**  
5289 **payments -- Use of bond proceeds -- Bond resolution -- Nonimpairment of appropriation**  
5290 **formula -- Issuance of bonds.**

5291 (1) Special service districts may:

5292 (a) issue bonds payable, in whole or in part, from federal mineral lease payments  
5293 which are to be deposited into the Mineral Lease Account under Section 59-21-1 and

5294 distributed to special service districts under Subsection 59-21-2(2)(h); or  
5295 (b) pledge all or any part of the mineral lease payments referred to in Subsection (1)(a)  
5296 as an additional source of payment for their general obligation bonds.  
5297 (2) The proceeds of these bonds may be used:  
5298 (a) to construct, repair, and maintain streets and roads;  
5299 (b) to fund any reserves and costs incidental to the issuance of the bonds and pay any  
5300 associated administrative costs; and  
5301 (c) for capital projects of the special service district.  
5302 (3) (a) The special service district board shall enact a resolution authorizing the  
5303 issuance of bonds which, until the bonds have been paid in full:  
5304 (i) shall be irrevocable; and  
5305 (ii) may not be amended in any manner that would:  
5306 (A) impair the rights of the bond holders; or  
5307 (B) jeopardize the timely payment of principal or interest when due.  
5308 (b) Notwithstanding any other provision of this chapter, the resolution may contain  
5309 covenants with the bond holder regarding:  
5310 (i) mineral lease payments, or their disposition;  
5311 (ii) the issuance of future bonds; or  
5312 (iii) other pertinent matters considered necessary by the governing body to:  
5313 (A) assure the marketability of the bonds; or  
5314 (B) insure the enforcement, collection, and proper application of mineral lease  
5315 payments.  
5316 (4) (a) Except as provided in Subsection (4)(b), the state may not alter, impair, or limit  
5317 the statutory appropriation formula provided in Subsection 59-21-2(2)(h), in a manner that  
5318 reduces the amounts to be distributed to the special service district until the bonds and the  
5319 interest on the bonds are fully met and discharged. Each special service district may include  
5320 this pledge and undertaking of the state in these bonds.  
5321 (b) Nothing in this section:

5322 (i) may preclude the alteration, impairment, or limitation of these bonds if adequate  
5323 provision is made by law for the protection of the bond holders; or  
5324 (ii) shall be construed:  
5325 (A) as a pledge guaranteeing the actual dollar amount ultimately received by  
5326 individual special service districts;  
5327 (B) to require the Department of Transportation to allocate the mineral lease payments  
5328 in a manner contrary to the general allocation method described in Subsection 59-21-2(2)(h);  
5329 or  
5330 (C) to limit the Department of Transportation in making rules or procedures allocating  
5331 mineral lease payments pursuant to Subsection 59-21-2(2)(h).  
5332 (5) (a) The average annual installments of principal and interest on bonds to which  
5333 mineral lease payments have been pledged as the sole source of payment may not at any one  
5334 time exceed:  
5335 (i) 80% of the total mineral lease payments received by the issuing entity during the  
5336 fiscal year of the issuing entity immediately preceding the fiscal year in which the resolution  
5337 authorizing the issuance of bonds is adopted; or  
5338 (ii) if the bonds are issued during the first fiscal year the issuing entity is eligible to  
5339 receive funds, 60% of the amount estimated by the Department of Transportation to be  
5340 appropriated to the issuing entity in that fiscal year.  
5341 (b) The Department of Transportation [~~shall not be~~] is not liable for any loss or  
5342 damage resulting from reliance on the estimates.  
5343 (6) The final maturity date of the bonds may not exceed 15 years from the date of their  
5344 issuance.  
5345 (7) Bonds may not be issued under this section after December 31, 2010.  
5346 (8) Bonds which are payable solely from a special fund into which mineral lease  
5347 payments are deposited constitute a borrowing based solely upon the credit of the mineral  
5348 lease payments received or to be received by the special service district and do not constitute  
5349 an indebtedness or pledge of the general credit of the special service district or the state.

5350 Section 174. Section **11-14-313** is amended to read:

5351 **11-14-313. Issuance of negotiable notes or bonds authorized -- Limitation on**  
5352 **amount of tax anticipation notes or bonds -- Procedure.**

5353 (1) (a) For the purpose of meeting the current expenses of the local political  
5354 subdivision and for any other purpose for which funds of the local political subdivision may  
5355 be expended, a local political subdivision may, if authorized by a resolution of its governing  
5356 body, borrow money by issuing its negotiable notes or bonds in an initial principal amount:

5357 (i) not in excess of 90% of the taxes and other revenues of the local political  
5358 subdivision for the current fiscal year, if the notes or bonds are issued after the annual tax levy  
5359 for taxes falling due during the fiscal year in which the notes or bonds are issued;

5360 (ii) not in excess of 75% of the taxes and other revenues of the local political  
5361 subdivision for the preceding fiscal year, if the notes or bonds are issued prior to the annual  
5362 tax levy for taxes falling due during the fiscal year in which the bonds or notes are issued; or

5363 (iii) not in excess of 75% of the taxes and other revenues that the governing body of  
5364 the local political subdivision estimates that the local political subdivision will receive for the  
5365 current fiscal year, if the notes or bonds are issued within 24 months following the creation of  
5366 the local political subdivision.

5367 (b) The proceeds of the notes or bonds shall be applied only in payment of current and  
5368 necessary expenses and other purposes for which funds of the local political subdivision may  
5369 be expended.

5370 (c) There shall be included in the annual levy a tax and there shall be provision made  
5371 for the imposition and collection of sufficient revenues other than taxes sufficient to pay the  
5372 notes or bonds at maturity.

5373 (d) If the taxes and other revenues in any one year are insufficient through delinquency  
5374 or uncollectibility of taxes or other cause to pay when due all the lawful debts of the local  
5375 political subdivision which have been or may hereafter be contracted, the governing body of  
5376 the local political subdivision is authorized and directed to levy and collect in the next  
5377 succeeding year a sufficient tax and to provide for the imposition and collection of sufficient

5378 revenues other than taxes to pay all of such lawfully contracted indebtedness, and may borrow  
 5379 as provided in this section in anticipation of such tax and other revenues to pay any such  
 5380 lawfully contracted indebtedness.

5381 (e) Each resolution authorizing the issuance of tax anticipation notes or bonds shall:

5382 (i) describe the taxes or revenues in anticipation of which the notes or bonds are to be  
 5383 issued; and

5384 (ii) specify the principal amount of the notes or bonds, any interest rates, including a  
 5385 variable interest rate, the notes or bonds shall bear, and the maturity dates of the notes or  
 5386 bonds, which dates [~~shall not~~] may not extend beyond the last day of the issuing local political  
 5387 subdivision's fiscal year.

5388 (2) Tax anticipation notes or bonds shall be issued and sold in such manner and at  
 5389 such prices, whether at, below, or above face value, as the governing body shall by resolution  
 5390 determine. Tax anticipation notes or bonds shall be in bearer form, except that the governing  
 5391 body may provide for the registration of the notes or bonds in the name of the owner, either as  
 5392 to principal alone, or as to principal and interest. Tax anticipation notes or bonds may be  
 5393 made redeemable prior to maturity at the option of the governing body in the manner and upon  
 5394 the terms fixed by the resolution authorizing their issuance. Tax anticipation notes or bonds  
 5395 shall be executed and shall be in such form and have such details and terms as shall be  
 5396 provided in the authorizing resolution.

5397 (3) The provisions of Sections 11-14-303, 11-14-304, 11-14-305, 11-14-313,  
 5398 11-14-315, 11-14-316, 11-14-401, 11-14-403, and 11-14-404 shall apply to all tax  
 5399 anticipation notes or bonds issued under this section. In applying these sections to tax  
 5400 anticipation notes, "bond" or "bonds" as used in these sections shall be deemed to include tax  
 5401 anticipation notes.

5402 Section 175. Section **11-14-315** is amended to read:

5403 **11-14-315. Nature and validity of bonds issued -- Applicability of other statutory**  
 5404 **provisions -- Budget provision required -- Applicable procedures for issuance.**

5405 Bonds issued under this chapter shall have all the qualities of negotiable paper, shall be

5406 incontestable in the hands of bona fide purchasers or holders for value and [~~shall not be~~] are  
5407 not invalid for any irregularity or defect in the proceedings for their issuance and sale. This  
5408 chapter is intended to afford an alternative method for the issuance of bonds by local political  
5409 subdivisions and [~~shall not~~] may not be so construed as to deprive any local political  
5410 subdivision of the right to issue its bonds under authority of any other statute, but nevertheless  
5411 this chapter shall constitute full authority for the issue and sale of bonds by local political  
5412 subdivisions. The provisions of Section 11-1-1, Utah Code Annotated 1953, [~~shall not be~~] are  
5413 not applicable to bonds issued under this chapter. Any local political subdivision subject to  
5414 the provisions of any budget law shall in its annual budget make proper provision for the  
5415 payment of principal and interest currently falling due on bonds issued hereunder, but no  
5416 provision need be made in any such budget prior to the issuance of the bonds for the issuance  
5417 thereof or for the expenditure of the proceeds thereof. No ordinance, resolution or proceeding  
5418 in respect to the issuance of bonds hereunder shall be necessary except as herein specifically  
5419 required, nor shall the publication of any resolution, proceeding or notice relating to the  
5420 issuance of the bonds be necessary except as herein required. Any publication made  
5421 hereunder may be made in any newspaper conforming to the terms hereof in which legal  
5422 notices may be published under the laws of Utah, without regard to the designation thereof as  
5423 the official journal or newspaper of the local political subdivision, and as required in Section  
5424 45-1-101. No resolution adopted or proceeding taken hereunder shall be subject to  
5425 referendum petition or to an election other than as herein required. All proceedings adopted  
5426 hereunder may be adopted on a single reading at any legally convened meeting of the  
5427 governing body.

5428 Section 176. Section **11-17-1.5** is amended to read:

5429 **11-17-1.5. Purpose of chapter.**

5430 (1) (a) The purposes of this chapter are to stimulate the economic growth of the state,  
5431 to promote employment and achieve greater industrial development in the state, to maintain or  
5432 enlarge domestic or foreign markets for Utah industrial products, to authorize municipalities  
5433 and counties in the state to facilitate capital formation, finance, acquire, own, lease, or sell

5434 projects for the purpose of reducing, abating, or preventing pollution and to protect and  
5435 promote the health, welfare, and safety of the citizens of the state and to improve local health  
5436 and the general welfare by inducing corporations, persons, or entities engaged in health care  
5437 services, including hospitals, nursing homes, extended care facilities, facilities for the care of  
5438 persons with a physical or mental disability, and administrative and support facilities, to  
5439 locate, relocate, modernize, or expand in this state and to assist in the formation of investment  
5440 capital with respect thereto.

5441 (b) The Legislature declares that the acquisition or financing, or both, of projects  
5442 under the Utah Industrial Facilities and Development Act and the issuance of bonds under it  
5443 constitutes a proper public purpose.

5444 (2) (a) It is declared that the policy of the state is to encourage the development of free  
5445 enterprise and entrepreneurship for the purpose of the expansion of employment opportunities  
5446 and economic development.

5447 (b) It is declared that there exists in the state an inadequate amount of locally  
5448 managed, pooled venture capital in the private sector available to invest in early stage  
5449 businesses having high growth potential and that can provide jobs for Utah citizens.

5450 (c) It is found that venture capital is required for healthy economic development of  
5451 sectors of the economy having high growth and employment potential.

5452 (d) It is further found that the public economic development purposes of the state and  
5453 its counties and municipalities can be fostered by the sale of industrial revenue bonds for the  
5454 purpose of providing funding for locally managed, pooled new venture and economic  
5455 development funds in accordance with the provisions of this chapter.

5456 (e) It is declared that in order to assure adequate investment of private capital for these  
5457 uses, cooperation between private enterprise and state and local government is necessary and  
5458 in the public interest and that the facilitation of capital accumulation is the appropriate activity  
5459 of the counties and municipalities of this state and also of the Governor's Office of Economic  
5460 Development.

5461 (f) It is found that venture capital funds historically, because of the more intensive

5462 nature of their relationship with companies in which they invest, tend to concentrate their  
5463 investments within a relatively close geographical area to their headquarters location.

5464 (g) It is found and declared that investors in economic development or new venture  
5465 investment funds require for the overall security of their investments reasonable diversification  
5466 of investment portfolios and that, in the course of this diversification, investments are often  
5467 syndicated or jointly made among several financial institutions or funds. It is expressly found  
5468 and declared that an economic development or new venture investment fund [~~must~~] shall from  
5469 time to time for its optimal profitability and efficiency (which are important for the security  
5470 and profit of bond purchasers providing funds therefor) cooperate with others who may be  
5471 located outside of Utah or the county or municipality where the fund is headquartered in the  
5472 making of investments and that the fund [~~must~~] shall be free in the interests of reciprocal  
5473 relationships with other financial institutions and diversification of risks to invest from time to  
5474 time in enterprises that are located outside of Utah or the counties or municipalities. It is  
5475 specifically found that such activity by a locally managed fund, funded in whole or in part  
5476 with the proceeds of bonds sold under this chapter, is within the public purposes of the state  
5477 and any county or municipality offering the bonds, provided that the fund locates within Utah  
5478 or the county or municipality its headquarters where its actual investment decisions and  
5479 management functions occur and limits the aggregate amount of its investments in companies  
5480 located outside of Utah to an amount that in the aggregate does not exceed the aggregate  
5481 amount of investments made by institutions and funds located outside of Utah in Utah  
5482 companies, that the locally managed fund has sponsored or in which it has invested and that it  
5483 has brought to the attention of investors outside of Utah.

5484 Section 177. Section **11-17-2** is amended to read:

5485 **11-17-2. Definitions.**

5486 As used in this chapter:

5487 (1) "Bonds" means bonds, notes, or other evidences of indebtedness.

5488 (2) "Finance" or "financing" includes the issuing of bonds by a municipality, county,  
5489 or state university for the purpose of using a portion, or all or substantially all of the proceeds

5490 to pay for or to reimburse the user or its designee for the costs of the acquisition of facilities of  
5491 a project, or to create funds for the project itself where appropriate, whether these costs are  
5492 incurred by the municipality, the county, the state university, the user, or a designee of the  
5493 user. If title to or in these facilities at all times remains in the user, the bonds of the  
5494 municipality or county shall be secured by a pledge of one or more notes, debentures, bonds,  
5495 other secured or unsecured debt obligations of the user, or such sinking fund or other  
5496 arrangement as in the judgment of the governing body is appropriate for the purpose of  
5497 assuring repayment of the bond obligations to investors in accordance with their terms.

5498 (3) "Governing body" means:

5499 (a) for a county, city, or town, the legislative body of the county, city, or town;

5500 (b) for the military installation development authority created in Section 63H-1-201,  
5501 the authority board, as defined in Section 63H-1-102;

5502 (c) for the University of Utah and Utah State University, the board or body having the  
5503 control and supervision of the University of Utah and Utah State University; and

5504 (d) for a nonprofit corporation or foundation created by and operating under the  
5505 auspices of a state university, the board of directors or board of trustees of that corporation or  
5506 foundation.

5507 (4) "Industrial park" means land, including all necessary rights, appurtenances,  
5508 easements, and franchises relating to it, acquired and developed by any municipality, county,  
5509 or state university for the establishment and location of a series of sites for plants and other  
5510 buildings for industrial, distribution, and wholesale use. There may be included as part of the  
5511 development of the land for any industrial park under this chapter the acquisition and  
5512 provision of water, sewerage, drainage, street, road, sidewalk, curb, gutter, street lighting,  
5513 electrical distribution, railroad, or docking facilities, or any combination of them, but only to  
5514 the extent that these facilities are incidental to the use of the land as an industrial park.

5515 (5) "Mortgage" means a mortgage, trust deed, or other security device.

5516 (6) "Municipality" means any incorporated city or town in the state, including cities or  
5517 towns operating under home rule charters.

5518 (7) "Pollution" means any form of environmental pollution including~~[-but not limited~~  
5519 ~~to;]~~ water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution,  
5520 radiation contamination, or noise pollution.

5521 (8) "Project" means:

5522 (a) any industrial park, land, interest in land, building, structure, facility, system,  
5523 fixture, improvement, appurtenance, machinery, equipment, or any combination of them,  
5524 whether or not in existence or under construction:

5525 (i) that is suitable for industrial, manufacturing, warehousing, research, business, and  
5526 professional office building facilities, commercial, shopping services, food, lodging, low  
5527 income rental housing, recreational, or any other business purposes;

5528 (ii) that is suitable to provide services to the general public;

5529 (iii) that is suitable for use by any corporation, person, or entity engaged in health care  
5530 services, including hospitals, nursing homes, extended care facilities, facilities for the care of  
5531 persons with a physical or mental disability, and administrative and support facilities; or

5532 (iv) that is suitable for use by a state university for the purpose of aiding in the  
5533 accomplishment of its authorized academic, scientific, engineering, technical, and economic  
5534 development functions, but "project" does not include any property, real, personal, or mixed,  
5535 for the purpose of the construction, reconstruction, improvement, or maintenance of a public  
5536 utility as defined in Section 54-2-1, and except as provided in Subsection (8)(b);

5537 (b) any land, interest in land, building, structure, facility, system, fixture,  
5538 improvement, appurtenance, machinery, equipment, or any combination of them, used by any  
5539 individual, partnership, firm, company, corporation, public utility, association, trust, estate,  
5540 political subdivision, state agency, or any other legal entity, or its legal representative, agent,  
5541 or assigns, for the reduction, abatement, or prevention of pollution, including~~[-but not limited~~  
5542 ~~to;]~~ the removal or treatment of any substance in process material, if that material would cause  
5543 pollution if used without the removal or treatment;

5544 (c) facilities, machinery, or equipment, the manufacturing and financing of which will  
5545 maintain or enlarge domestic or foreign markets for Utah industrial products; or

5546 (d) any economic development or new venture investment fund to be raised other than  
5547 from:

- 5548 (i) municipal or county general fund moneys;
- 5549 (ii) moneys raised under the taxing power of any county or municipality; or
- 5550 (iii) moneys raised against the general credit of any county or municipality.

5551 (9) "State university" means the University of Utah and Utah State University and  
5552 includes any nonprofit corporation or foundation created by and operating under their  
5553 authority.

5554 (10) "User" means the person, whether natural or corporate, who will occupy, operate,  
5555 maintain, and employ the facilities of, or manage and administer a project after the financing,  
5556 acquisition, or construction of it, whether as owner, manager, purchaser, lessee, or otherwise.

5557 Section 178. Section **11-17-4** is amended to read:

5558 **11-17-4. Bonds -- Limitations -- Form and provisions -- Sale -- Negotiability.**

5559 (1) All bonds issued by a municipality or county under this chapter shall be limited  
5560 obligations of the municipality or county. Bonds and interest coupons issued under this  
5561 chapter [~~shall not~~] may not constitute nor give rise to a general obligation or liability of the  
5562 municipality or county or a charge against its general credit or taxing powers. Such limitation  
5563 shall be plainly stated upon the face of such bonds.

5564 (2) The bonds referred to in Subsection (1) may be authorized by resolution of the  
5565 governing body, and may:

- 5566 (a) be executed and delivered at any time and from time to time;
- 5567 (b) be in such form and denominations;
- 5568 (c) be of such tenor;
- 5569 (d) be in registered or bearer form either as to principal or interest or both;
- 5570 (e) be payable in such installments and at such time or times as the governing body  
5571 may deem advisable;
- 5572 (f) be payable at such place or places either within or without the state of Utah;
- 5573 (g) bear interest at such rate or rates, payable at such place or places, and evidenced in

5574 such manner;

5575 (h) be redeemable prior to maturity, with or without premium;

5576 (i) be convertible into equity positions in any asset or assets acquired or developed  
5577 with the proceeds of the sale of the bonds; and

5578 (j) contain such other provisions not inconsistent with this chapter as shall be deemed  
5579 for the best interests of the municipality or county and provided for in the proceedings of the  
5580 governing body under which the bonds shall be authorized to be issued.

5581 (3) Any bonds issued under this chapter may be sold at public or private sale in such  
5582 manner and at such time or times as may be determined by the governing body to be most  
5583 advantageous. The municipality or county may pay all expenses, premiums, and commissions  
5584 which the governing body may deem necessary or advantageous in connection with the  
5585 authorization, sale, and issuance of such bonds from the proceeds of the sale of such bonds or  
5586 from the revenues of the project or projects.

5587 (4) All bonds issued under this chapter and all interest coupons applicable thereto  
5588 shall be construed to be negotiable instruments, despite the fact that they are payable solely  
5589 from a specified source.

5590 Section 179. Section **11-17-5** is amended to read:

5591 **11-17-5. Security for bonds -- Provisions in security agreements -- Limitations --**  
5592 **Liens.**

5593 (1) The principal of and interest on any bonds issued under this chapter:

5594 (a) shall be secured by a pledge and assignment of the revenues out of which the  
5595 bonds are made payable or by such other sinking fund or security provision as shall in the  
5596 judgment of the governing body be reasonably designed to assure payment of the obligations  
5597 to the purchasers thereof; however, the bond purchasers [~~shall not~~] may not in any event have  
5598 recourse against the general funds or general credit of the governmental offeror;

5599 (b) may be secured by a mortgage covering all or any part of the project; and

5600 (c) may be secured by any other security device deemed most advantageous by the  
5601 governing body issuing the bonds.

5602           (2) The proceedings under which the bonds are authorized to be issued under this  
5603 chapter and any mortgage given to secure them may contain any agreements and provisions  
5604 customarily contained in instruments securing bonds, including, without limiting the  
5605 generality of the foregoing, provisions respecting:

5606           (a) the fixing and collection of revenues for any project covered by the proceedings or  
5607 mortgage;

5608           (b) the terms to be incorporated in the lease, installment purchase agreement, rental  
5609 agreement, mortgage, trust indenture, loan agreement, financing agreement, or other  
5610 agreement for the project;

5611           (c) the maintenance and insurance of the project;

5612           (d) the creation and maintenance of special funds from the revenues of projects; and

5613           (e) the rights and remedies available in the event of a default to the bondholders or to  
5614 the trustee under a mortgage, all as the governing body deems advisable and which is not in  
5615 conflict with this chapter, except that in making any agreements or provisions a municipality  
5616 or county may not obligate itself except with respect to the project and the application of the  
5617 revenues from it and may not incur a general obligation or liability or a charge upon its general  
5618 credit or against its taxing powers.

5619           (3) The proceedings authorizing any bonds under this chapter and any mortgage  
5620 securing bonds may provide that, in the event of a default in the payment of the principal of or  
5621 the interest on the bonds or in the performance of any agreement contained in the proceedings  
5622 or mortgage, payment and performance may be enforced by the appointment of a receiver with  
5623 power to charge and collect the revenues from the project and to apply the revenues from the  
5624 project in accordance with the proceedings or the provisions of the mortgage.

5625           (4) Any mortgage made under this chapter to secure bonds issued under it may also  
5626 provide that, in the event of a default in payment or the violation of any agreement contained  
5627 in the mortgage, the mortgage may be foreclosed or otherwise realized on in any manner  
5628 permitted by law. The mortgage may also provide that any trustee under the mortgage or the  
5629 holder of any of the bonds secured by the mortgage may become the purchaser at any

5630 foreclosure sale if the highest bidder. No breach of any agreement imposes any general  
5631 obligation or liability upon a municipality or county or any charge upon their general credit or  
5632 against their taxing powers.

5633 (5) The revenues pledged and received are immediately subject to the lien of the  
5634 pledge without any physical delivery of any lease, purchase agreement, financing agreement,  
5635 loan agreement, note, debenture, bond, or other obligation under which the revenues are  
5636 payable, or any other act, except that the proceedings or agreement by which the pledge is  
5637 created shall be recorded in the records of the municipality, county, or state university. The  
5638 proceedings or agreement by which the pledge is created, or a financing statement, need not be  
5639 filed or recorded under the Uniform Commercial Code, or otherwise, except in the records of  
5640 the municipality, county, or state university as provided in this Subsection (5). The lien of any  
5641 pledge is valid and binding and has priority as against all parties having claims of any kind in  
5642 tort, contract, or otherwise against the municipality, county, or state university, irrespective of  
5643 whether the parties have notice of the lien. Each pledge and agreement made for the benefit or  
5644 security of any of the revenue bonds issued under this chapter shall continue effective until the  
5645 principal, interest, and premium, if any, on the revenue bonds have been fully paid or  
5646 provision for payment has been made.

5647 Section 180. Section **11-17-7** is amended to read:

5648 **11-17-7. Disposition of proceeds of bonds.**

5649 The proceeds from the sale of any bonds issued under this act shall be applied only for  
5650 the purposes for which the bonds were issued; but any accrued interest and premium received  
5651 upon any such sale shall be applied to the payment of the principal of or the interest on the  
5652 bonds sold, and if for any reason any portion of such proceeds [~~shall not be~~] are not needed for  
5653 the purposes for which the bonds were issued, then such unneeded portion of such proceeds  
5654 shall be applied to the payment of the principal of or the interest on such bonds or in  
5655 accordance with such other plan or device for the furtherance of the project and the protection  
5656 of the bondholder as the governing body shall deem appropriate under the circumstances.

5657 Section 181. Section **11-17-10** is amended to read:

5658           **11-17-10. Tax exemption for property and bonds -- Exception.**

5659           All property acquired or held by the county or municipality under this chapter is  
5660 declared to be public property used for essential public and governmental purposes; and all  
5661 such property and bonds issued under this chapter and the income from them are exempt from  
5662 all taxes imposed by the state, any county, any municipality, or any other political subdivision  
5663 of the state, except for the corporate franchise tax. This exemption [~~shall not~~] does not extend  
5664 to the interests of any private person, firm, association, partnership, corporation, or other  
5665 private business entity in such property or in any other property such business entity may place  
5666 upon or use in connection with any project, all of which shall be subject to the provisions of  
5667 Section 59-4-101 and all other applicable laws nor to any income of such private business  
5668 entity, which, except as provided in this section for such bonds and the income from them,  
5669 shall be subject to all applicable laws, regarding the taxing of such income.

5670           Section 182. Section **11-25-9** is amended to read:

5671           **11-25-9. Bonds payable solely from revenues -- Cities, towns, and counties not**  
5672 **obligated.**

5673           Revenues shall be the sole source of funds pledged by the agency for repayment of its  
5674 bonds. Bonds issued under the provisions of this part [~~shall not~~] may not be deemed to  
5675 constitute a debt or liability of the agency or a pledge of the faith and credit of the agency but  
5676 shall be payable solely from revenues. The issuance of bonds [~~shall not~~] may not directly,  
5677 indirectly, or contingently obligate a city, town or county, or a city or town and county which  
5678 has designated its governing body as an agency to levy or pledge any form of taxation or to  
5679 make any appropriation for payment of bonds issued by an agency.

5680           Section 183. Section **11-25-11** is amended to read:

5681           **11-25-11. Comprehensive financing program ordinance -- Contents.**

5682           Prior to the issuance of any bonds or bond anticipation notes of the agency for  
5683 residential rehabilitation, the agency shall by ordinance adopt a comprehensive residential  
5684 rehabilitation financing program, including:

5685           (1) Criteria for selection of residential rehabilitation areas by the agency including

5686 findings by the agency that:

5687 (a) There are a substantial number of deteriorating structures in the area which do not  
5688 conform to community standards for decent, safe, sanitary housing.

5689 (b) Financial assistance from the agency for residential rehabilitation is necessary to  
5690 arrest the deterioration of the area.

5691 (c) Financing of residential rehabilitation in the area is economically feasible. These  
5692 findings are not required, however, when the residential rehabilitation area is located within  
5693 the boundaries of a project area covered by an urban renewal project area plan adopted in  
5694 accordance with Section 17C-2-107.

5695 (2) Procedures for selection of residential rehabilitation areas by the agency including:

5696 (a) Provisions for citizen participation in selection of residential rehabilitation areas.

5697 (b) Provisions for a public hearing by the agency prior to selection of any particular  
5698 residential rehabilitation area.

5699 (3) A commitment that rehabilitation standards will be enforced on each residence for  
5700 which financing is provided.

5701 (4) Guidelines for financing residential rehabilitation which shall be subject to the  
5702 following limitations:

5703 (a) Outstanding loans on the property to be rehabilitated including the amount of the  
5704 loans for rehabilitation, [~~shall not~~] may not exceed 80% of the anticipated after-rehabilitation  
5705 value of the property to be rehabilitated, except that the agency may authorize loans of up to  
5706 95% of the anticipated after-rehabilitation value of the property if loans are made for the  
5707 purpose of rehabilitating the property for residential purposes, there is demonstrated need for  
5708 such higher limit, and there is a high probability that the value of the property will not be  
5709 impaired during the term of the loan.

5710 (b) The maximum repayment period for residential rehabilitation loans shall be 20  
5711 years or 3/4 of the economic life of the property, whichever is less.

5712 (c) The maximum amount loan for rehabilitation for each dwelling unit and for each  
5713 commercial unit which is, or is part of a "residence" as defined in this chapter, shall be

5714 established by resolution of the agency.

5715 Section 184. Section 11-27-5 is amended to read:

5716 **11-27-5. Negotiability of bonds -- Intent and construction of chapter -- Budget**  
5717 **for payment of bonds -- Proceedings limited to those required by chapter -- No election**  
5718 **required -- Application of chapter.**

5719 (1) Refunding bonds shall have all the qualities of negotiable paper, shall be  
5720 incontestable in the hands of bona fide purchasers or holders for value, and ~~[shall not be]~~ are  
5721 not invalid for any irregularity or defect in the proceedings for their issuance and sale. This  
5722 chapter is intended to afford an alternative method for the issuance of refunding bonds by  
5723 public bodies and ~~[shall not]~~ may not be ~~[so]~~ construed ~~[as]~~ to deprive any public body of the  
5724 right to issue bonds for refunding purposes under authority of any other statute, but this  
5725 chapter, nevertheless, shall constitute full authority for the issue and sale of refunding bonds  
5726 by public bodies. Section 11-1-1, however, ~~[shall not be]~~ is not applicable to refunding bonds.

5727 (2) Any public body subject to any budget law shall in its annual budget make proper  
5728 provision for the payment of principal and interest currently falling due on refunding bonds,  
5729 but no provision need be made in the budget prior to the issuance of the refunding bonds for  
5730 their issuance or for the expenditure of the proceeds from them.

5731 (3) (a) No ordinance, resolution, or proceeding concerning the issuance of refunding  
5732 bonds nor the publication of any resolution, proceeding, or notice relating to the issuance of  
5733 the refunding bonds shall be necessary except as specifically required by this chapter.

5734 (b) A publication made under this chapter may be made:

5735 (i) in any newspaper in which legal notices may be published under the laws of Utah,  
5736 without regard to its designation as the official journal or newspaper of the public body; and

5737 (ii) as required in Section 45-1-101.

5738 (4) No resolution adopted or proceeding taken under this chapter shall be subject to  
5739 any referendum petition or to an election other than as required by this chapter. All  
5740 proceedings adopted under this chapter may be adopted on a single reading at any  
5741 legally-convened meeting of the governing body. This chapter shall apply to all bonds issued

5742 and outstanding at the time this chapter takes effect as well as to bonds issued after this  
5743 chapter takes effect.

5744 Section 185. Section **11-30-2** is amended to read:

5745 **11-30-2. Definitions.**

5746 As used in this chapter:

5747 (1) "Attorney general" means the attorney general of the state or one of his assistants.

5748 (2) "Bonds" means any evidence or contract of indebtedness that is issued or  
5749 authorized by a public body, including, without limitation, bonds, refunding bonds, advance  
5750 refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of  
5751 indebtedness, warrants, commercial paper, contracts, and leases, whether they are general  
5752 obligations of the issuing public body or are payable solely from a specified source,  
5753 including~~[-, but not limited to,]~~ annual appropriations by the public body.

5754 (3) "County attorney" means the county attorney of a county or one of his assistants.

5755 (4) "Lease" means any lease agreement, lease purchase agreement, and installment  
5756 purchase agreement, and any certificate of interest or participation in any of the foregoing.  
5757 Reference in this chapter to issuance of bonds includes execution and delivery of leases.

5758 (5) "Person" means any person, association, corporation, or other entity.

5759 (6) "Public body" means the state or any agency, authority, instrumentality, or  
5760 institution of the state, or any county, municipality, quasi-municipal corporation, school  
5761 district, local district, special service district, political subdivision, or other governmental  
5762 entity existing under the laws of the state, whether or not possessed of any taxing power. With  
5763 respect to leases, public body, as used in this chapter, refers to the public body which is the  
5764 lessee, or is otherwise the obligor with respect to payment under any such leases.

5765 (7) "Refunding bonds" means any bonds that are issued to refund outstanding bonds,  
5766 including both refunding bonds and advance refunding bonds.

5767 (8) "State" means the state of Utah.

5768 (9) "Validity" means any matter relating to the legality and validity of the bonds and  
5769 the security therefor, including, without limitation, the legality and validity of:

- 5770 (a) a public body's authority to issue and deliver the bonds;
- 5771 (b) any ordinance, resolution, or statute granting the public body authority to issue and  
5772 deliver the bonds;
- 5773 (c) all proceedings, elections, if any, and any other actions taken or to be taken in  
5774 connection with the issuance, sale, or delivery of the bonds;
- 5775 (d) the purpose, location, or manner of the expenditure of funds;
- 5776 (e) the organization or boundaries of the public body;
- 5777 (f) any assessments, taxes, rates, rentals, fees, charges, or tolls levied or that may be  
5778 levied in connection with the bonds;
- 5779 (g) any lien, proceeding, or other remedy for the collection of those assessments, taxes,  
5780 rates, rentals, fees, charges, or tolls;
- 5781 (h) any contract or lease executed or to be executed in connection with the bonds;
- 5782 (i) the pledge of any taxes, revenues, receipts, rentals, or property, or encumbrance  
5783 thereon or security interest therein to secure the bonds; and
- 5784 (j) any covenants or provisions contained in or to be contained in the bonds. If any  
5785 deed, will, statute, resolution, ordinance, lease, indenture, contract, franchise, or other  
5786 instrument may have an effect on any of the aforementioned, validity also means a declaration  
5787 of the validity and legality thereof and of rights, status, or other legal relations arising  
5788 therefrom.

5789 Section 186. Section **11-31-2** is amended to read:

5790 **11-31-2. Definitions.**

5791 As used in this chapter:

- 5792 (1) "Bonds" means any evidence or contract of indebtedness that is issued or  
5793 authorized by a public body, including, without limitation, bonds, refunding bonds, advance  
5794 refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of  
5795 indebtedness, warrants, commercial paper, contracts, and leases, whether they are general  
5796 obligations of the issuing public body or are payable solely from a specified source,  
5797 including ~~but not limited to,~~ annual appropriations by the public body.

5798 (2) "Legislative body" means, with respect to any action to be taken by a public body  
5799 with respect to bonds, the board, commission, council, agency, or other similar body  
5800 authorized by law to take legislative action on behalf of the public body, and in the case of the  
5801 state, the Legislature, the state treasurer, the commission created under Section 63B-1-201,  
5802 and any other entities the Legislature designates.

5803 (3) "Public body" means the state and any public department, public agency, or other  
5804 public entity existing under the laws of the state, including, without limitation, any agency,  
5805 authority, instrumentality, or institution of the state, and any county, city, town, municipal  
5806 corporation, quasi-municipal corporation, state university or college, school district, special  
5807 service district, local district, separate legal or administrative entity created under the  
5808 Interlocal Cooperation Act or other joint agreement entity, community development and  
5809 renewal agency, and any other political subdivision, public authority, public agency, or public  
5810 trust existing under the laws of the state.

5811 Section 187. Section **11-32-7** is amended to read:

5812 **11-32-7. Bond principal and interest -- Security agreements -- Trustee.**

5813 (1) The principal of and interest on any bonds issued under this chapter:

5814 (a) shall be secured by a pledge and assignment of the revenues received by the  
5815 financing authority under the assignment agreement with respect to the delinquent tax  
5816 receivables purchased with the proceeds of the sale of these bonds;

5817 (b) may be secured by a pledge and security interest in the assignment agreement; and

5818 (c) may be secured by amounts held in reserve funds, letters of credit, bond insurance,  
5819 surety bonds, or by such other security devices with respect to the delinquent tax receivables  
5820 deemed most advantageous by the authority.

5821 (2) The proceedings under which the bonds are authorized to be issued under this  
5822 chapter and any security agreement given to secure the bonds may contain any agreements and  
5823 provisions customarily contained in instruments securing bonds, including~~[, but not limited~~  
5824 ~~to,]~~ provisions respecting:

5825 (a) the collection of the delinquent taxes covered by these proceedings or any security

5826 agreement;

5827 (b) the terms to be incorporated in the assignment agreement with respect to the  
5828 delinquent tax receivables;

5829 (c) the creation and maintenance of reserve funds from the proceeds of sale of bonds  
5830 or from the collection of the delinquent taxes;

5831 (d) the rights and remedies available to the holders of bonds or to the trustee in the  
5832 event of a default, as the board of trustees of the authority may determine in accordance with  
5833 this chapter.

5834 (3) The security agreements, trust indentures, or other security devices shall provide  
5835 that following the exhaustion of all legal means of collection of the delinquent tax receivables  
5836 no judgment may be entered against the authority or the county or any participant members or  
5837 the state of Utah or any of its political subdivisions.

5838 (4) The proceedings authorizing bonds under this chapter, and any security agreement  
5839 securing these bonds, may provide that upon default in the payment of the principal of or  
5840 interest on the bonds or in the performance of any covenant or agreement contained in the  
5841 proceedings or security agreement, the payment or performance may be enforced by the  
5842 appointment of a receiver for the delinquent tax receivables with power to compel the county  
5843 to use the statutory means it has to collect the delinquent tax receivables and apply the  
5844 revenues in accordance with these proceedings or the security agreement.

5845 (5) No breach of a security agreement, covenant, or other agreement may impose any  
5846 general obligation or liability upon, nor a charge against, the county or any participant  
5847 member, nor the general credit or taxing power of this state or any of its political subdivisions.

5848 (6) The proceedings authorizing the issuance of bonds may provide for the  
5849 appointment of a trustee, which may be a trust company or bank having trust powers located  
5850 in or outside of this state.

5851 Section 188. Section **11-34-1** is amended to read:

5852 **11-34-1. Definitions.**

5853 As used in this chapter:

5854 (1) "Bonds" means any evidence or contract of indebtedness that is issued or  
5855 authorized by a public body, including, without limitation, bonds, refunding bonds, advance  
5856 refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of  
5857 indebtedness, warrants, commercial paper, contracts, and leases, whether they are general  
5858 obligations of the issuing public body or are payable solely from a specified source,  
5859 including~~[-, but not limited to,]~~ annual appropriations by the public body.

5860 (2) "Public body" means the state and any public department, public agency, or other  
5861 public entity existing under the laws of the state, including, without limitation, any agency,  
5862 authority, instrumentality, or institution of the state, and any county, city, town, municipal  
5863 corporation, quasi-municipal corporation, state university or college, school district, special  
5864 service district, local district, separate legal or administrative entity created under the  
5865 Interlocal Cooperation Act or other joint agreement entity, community development and  
5866 renewal agency, and any other political subdivision, public authority, public agency, or public  
5867 trust existing under the laws of this state.

5868 Section 189. Section **11-34-2** is amended to read:

5869 **11-34-2. Bonds issued in foreign denominations -- Required conditions and**  
5870 **agreements.**

5871 Any bonds issued by a public body may be denominated in a foreign currency, but only  
5872 if, at the time of the issuance of the bonds, the public body which issues them enters into one  
5873 or more foreign exchange agreements, forward exchange agreements, foreign currency  
5874 exchange agreements, or other similar agreements with a bank or other financial institution,  
5875 foreign or domestic, the senior unsecured long-term debt obligations of which are rated in one  
5876 of the highest two rating categories by Moody's Investors Service, Inc. or Standard & Poor's  
5877 Corporation or another similar nationally recognized securities rating agency, to protect the  
5878 public body against the risk of a decline in the value of the United States dollar in relation to  
5879 the foreign currency in which the bonds are denominated. Such agreements ~~[must protect]~~  
5880 shall contain a provision that protects against ~~[such]~~ the risk of a decline in the value of the  
5881 United States dollar with respect to the interest on the bonds and the principal of the bonds to

5882 the maturity or redemption thereof. The costs of such agreements, including without  
5883 limitation periodic fees and other amounts due to the other party or parties to such agreements,  
5884 may be paid by the public body from the proceeds of the bonds and other revenues of the  
5885 public body.

5886 Section 190. Section **11-36-401** is amended to read:

5887 **11-36-401. Impact fees -- Challenges -- Appeals.**

5888 (1) Any person or entity residing in or owning property within a service area, and any  
5889 organization, association, or corporation representing the interests of persons or entities  
5890 owning property within a service area, may file a declaratory judgment action challenging the  
5891 validity of the fee.

5892 (2) (a) Any person or entity required to pay an impact fee who believes the fee does  
5893 not meet the requirements of law may file a written request for information with the local  
5894 political subdivision who established the fee.

5895 (b) Within two weeks after the receipt of the request for information, the local political  
5896 subdivision shall provide the person or entity with the written analysis required by Section  
5897 11-36-201, the capital facilities plan, and with any other relevant information relating to the  
5898 impact fee.

5899 (3) (a) Any local political subdivision may establish, by ordinance or resolution, an  
5900 administrative appeals procedure to consider and decide challenges to impact fees.

5901 (b) If the local political subdivision establishes an administrative appeals procedure,  
5902 the local political subdivision shall ensure that the procedure includes a requirement that the  
5903 local political subdivision make its decision no later than 30 days after the date the challenge  
5904 to the impact fee is filed.

5905 (4) (a) In addition to the method of challenging an impact fee under Subsection (1), a  
5906 person or entity that has paid an impact fee that was imposed by a local political subdivision  
5907 may challenge:

5908 (i) if the impact fee enactment was adopted on or after July 1, 2000:

5909 (A) whether the local political subdivision complied with the notice requirements of

5910 this chapter with respect to the imposition of the impact fee; and

5911 (B) whether the local political subdivision complied with other procedural  
5912 requirements of this chapter for imposing the impact fee; and

5913 (ii) except as limited by Subsection (4)(a)(i), the impact fee.

5914 (b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated  
5915 within:

5916 (i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity  
5917 pays the impact fee;

5918 (ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity  
5919 pays the impact fee; or

5920 (iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays  
5921 the impact fee.

5922 (c) A challenge under Subsection (4)(a) is initiated by filing:

5923 (i) if the local political subdivision has established an administrative appeals  
5924 procedure under Subsection (3), the necessary document, under the administrative appeals  
5925 procedure, for initiating the administrative appeal;

5926 (ii) a request for arbitration as provided in Subsection 11-36-402(1); or

5927 (iii) an action in district court.

5928 (d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable  
5929 remedy of requiring the local political subdivision to correct the defective notice and repeat  
5930 the process.

5931 (ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable  
5932 remedy of requiring the local political subdivision to correct the defective process.

5933 (iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the  
5934 difference between what the person or entity paid as an impact fee and the ~~[amount the impact~~  
5935 ~~fee should have been if it had been correctly calculated]~~ correct impact fee amount.

5936 (e) Nothing in this Subsection (4) may be construed as requiring a person or entity to  
5937 exhaust administrative remedies with the local political subdivision before filing an action in

5938 district court under this Subsection (4).

5939 (f) The protections given to a municipality under Section 10-9a-801 and to a county  
5940 under Section 17-27a-801 do not apply in a challenge under Subsection (4)(a)(i)(A).

5941 (5) The judge may award reasonable attorneys' fees and costs to the prevailing party in  
5942 any action brought under this section.

5943 (6) Nothing in this chapter may be construed as restricting or limiting any rights to  
5944 challenge impact fees that were paid before the effective date of this chapter.

5945 Section 191. Section **13-1-1** is amended to read:

5946 **13-1-1. Legislative findings and declarations.**

5947 The Legislature finds that many businesses and occupations in the state have a  
5948 pronounced physical and economic impact on the health, safety, and welfare of the citizens of  
5949 the state. The Legislature further finds that while the overall impact is generally beneficial to  
5950 the public, the potential for harm and injury frequently warrants intervention by state  
5951 government.

5952 The Legislature declares that it is appropriate and necessary for state government to  
5953 protect its citizens from harmful and injurious acts by persons offering or providing essential  
5954 or necessary goods and services to the general public. The Legislature further declares that  
5955 business regulation should not be unfairly discriminatory. However, the general public interest  
5956 [~~must~~] shall be recognized and regarded as the primary purpose of all regulation by state  
5957 government.

5958 Section 192. Section **13-1a-6** is amended to read:

5959 **13-1a-6. Powers of Division of Corporations and Commercial Code -- Document**  
5960 **retention.**

5961 (1) The Division of Corporations and Commercial Code shall have the power and  
5962 authority reasonably necessary to enable it to efficiently administer the laws and rules for  
5963 which it is responsible and to perform the duties imposed upon it by law.

5964 (2) The division has authority under Title 63G, Chapter 3, Utah Administrative  
5965 Rulemaking Act, to make rules and procedures for the processing, retention, and disposal of

5966 filed documents to efficiently utilize electronic and computerized document image storage and  
5967 retrieval.

5968 (3) Notwithstanding the provisions of Section 63A-12-105, original documents filed  
5969 in the division offices [~~shall not~~] may not be considered property of the state if electronic  
5970 image reproductions thereof which comply with the provisions of Title 63G, Chapter 2,  
5971 Government Records Access and Management Act, are retained by the division.

5972 Section 193. Section **13-2-6** is amended to read:

5973 **13-2-6. Enforcement powers.**

5974 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the  
5975 division shall have authority to convene administrative hearings, issue cease and desist orders,  
5976 and impose fines under all the chapters identified in Section 13-2-1.

5977 (2) Any person who intentionally violates a final cease and desist order entered by the  
5978 division of which the person has notice is guilty of a third degree felony.

5979 (3) If the division has reasonable cause to believe that any person is engaged in  
5980 violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged  
5981 violator a citation signed by the division's director or the director's designee.

5982 (a) Each citation shall be in writing and shall:

5983 (i) set forth with particularity the nature of the violation, including a reference to the  
5984 statutory or administrative rule provision being violated;

5985 (ii) state that any request for review of the citation [~~must~~] shall be made in writing and  
5986 be received by the division no more than 10 days following issuance;

5987 (iii) state the consequences of failing to make a timely request for review; and

5988 (iv) state all other information required by Subsection 63G-4-201(2).

5989 (b) In computing any time period prescribed by this section, the following days may  
5990 not be included:

5991 (i) the day a citation is issued by the division;

5992 (ii) the day the division received a request for review of a citation;

5993 (iii) Saturdays and Sundays; and

5994 (iv) a legal holiday set forth in Subsection 63G-1-301(1)(a).

5995 (c) If the recipient of a citation makes a timely request for review, within 10 days of  
5996 receiving the request, the division shall convene an adjudicative proceeding in accordance  
5997 with Title 63G, Chapter 4, Administrative Procedures Act.

5998 (d) (i) If the presiding officer finds that there is not substantial evidence that the  
5999 recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the  
6000 citation may not become final, and the division shall immediately vacate the citation and  
6001 promptly notify the recipient in writing.

6002 (ii) If the presiding officer finds there is substantial evidence that the recipient violated  
6003 a chapter listed in Section 13-2-1 at the time the citation was issued, the citation shall become  
6004 final and the division may enter a cease and desist order against the recipient.

6005 (e) A citation issued under this chapter may be personally served upon any person  
6006 upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure.  
6007 A citation also may be served by first-class mail, postage prepaid.

6008 (f) If the recipient fails to make a timely request for review, the citation shall become  
6009 the final order of the division. The period to contest the citation may be extended by the  
6010 director for good cause shown.

6011 (g) If the chapter violated allows for an administrative fine, after a citation becomes  
6012 final, the director may impose the administrative fine.

6013 (4) (a) A person violating a chapter identified in Section 13-2-1 is subject to the  
6014 division's jurisdiction if:

6015 (i) the violation or attempted violation is committed either wholly or partly within the  
6016 state;

6017 (ii) conduct committed outside the state constitutes an attempt to commit a violation  
6018 within the state; or

6019 (iii) transactional resources located within the state are used by the offender to directly  
6020 or indirectly facilitate a violation or attempted violation.

6021 (b) As used in this section, "transactional resources" means:

6022 (i) any mail drop or mail box, whether or not located on the premises of a United  
6023 States Post Office;

6024 (ii) any telephone or facsimile transmission device;

6025 (iii) any internet connection by a resident or inhabitant of this state with either a  
6026 resident or nonresident maintained internet site;

6027 (iv) any business office or private residence used for a business-related purpose;

6028 (v) any account with or services of a financial institution;

6029 (vi) the services of a common or private carrier; or

6030 (vii) the use of any city, county, or state asset or facility, including any road or  
6031 highway.

6032 (5) The director or the director's designee, for the purposes outlined in any chapter  
6033 administered by the division, may administer oaths, issue subpoenas, compel the attendance of  
6034 witnesses, and compel the production of papers, books, accounts, documents, and evidence.

6035 Section 194. Section **13-5-3** is amended to read:

6036 **13-5-3. Unlawful discriminations -- Burden of proof -- Taking or offering**  
6037 **commissions -- Payments for benefit of customers -- Discrimination among purchasers --**  
6038 **Inducing discriminations.**

6039 (1) (a) It is unlawful for any person engaged in commerce, in the course of such  
6040 commerce, either directly or indirectly, to discriminate in price between different purchasers of  
6041 commodities of like grade and quality, where either or any of the purchasers involved in such  
6042 discrimination are in commerce, where such commodities are sold for use, consumption, or  
6043 resale within the state and where the effect of such discrimination may be substantially to  
6044 lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy,  
6045 or prevent competition with any person who either grants or knowingly receives the benefit of  
6046 such discrimination, or with customers of either of them.

6047 (b) Nothing in this chapter [~~shall prevent~~] prevents:

6048 (i) differentials which make only due allowance for differences in the cost of  
6049 manufacture, sale, or delivery resulting from the different methods or quantities in which such

6050 commodities are to such purchasers sold or delivered;

6051 (ii) persons engaged in selling goods, wares, or merchandise in commerce from  
6052 selecting their own customers in bona fide transactions and not in restraint of trade; and

6053 (iii) price changes from time to time in response to changing conditions affecting the  
6054 market for or the marketability of the goods concerned, [~~such as, but not limited to,~~] including  
6055 actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress  
6056 sales under court process, or sales in good faith in discontinuance of business in the goods  
6057 concerned.

6058 (2) Upon proof being made, at any suit on a complaint under this section, that there  
6059 has been discrimination in price or services or facilities furnished or in payment for services or  
6060 facilities to be rendered, the burden of rebutting the prima-facie case thus made by showing  
6061 justification shall be upon the person charged with a violation of this section. However  
6062 nothing in this chapter shall prevent a seller rebutting the prima-facie case thus made by  
6063 showing that his lower price or the furnishing of services or facilities to any purchaser or  
6064 purchasers was made in good faith to meet an equally low price of a competitor, or the  
6065 services or facilities furnished by a competitor.

6066 (3) It is unlawful for any person engaged in commerce in the course of such  
6067 commerce, to pay or grant, or to receive or accept, anything of value as a commission,  
6068 brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and  
6069 not exceeding the actual cost of such services rendered in connection with the sale or purchase  
6070 of goods, wares, or merchandise.

6071 (4) It is unlawful for any person engaged in commerce to pay or contract for the  
6072 payment of anything of value to or for the benefit of a customer of such person in the course of  
6073 such commerce as compensation or in consideration for any services or facilities furnished by  
6074 or through such customer in connection with the processing, handling, sale, or offering for sale  
6075 of any products, or commodities manufactured, sold, or offered for sale by such person, unless  
6076 such payment or consideration is available on proportionally equal terms to all other customers  
6077 competing in the distribution of such products or commodities.

6078 (5) It is unlawful for any person to discriminate in favor of one purchaser against  
6079 another purchaser or purchasers of a commodity bought for resale with or without processing,  
6080 by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or  
6081 facilities connected with the processing, handling, sale, or offering for sale of such commodity  
6082 so purchased upon terms not accorded to all purchasers on proportionally equal terms.

6083 (6) It is unlawful for any person engaged in commerce, in the course of such  
6084 commerce, knowingly to induce or receive a discrimination in price which is prohibited by  
6085 this section.

6086 Section 195. Section **13-5-12** is amended to read:

6087 **13-5-12. Sales exempt from chapter.**

6088 (1) The provisions of this chapter [~~shall not~~] do not apply to any sale made:

6089 (a) in closing out in good faith the owner's stock or any part thereof for the purpose of  
6090 discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal  
6091 goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or  
6092 depreciation; provided, prior notice is given to the public thereof;

6093 (b) when the goods are damaged or deteriorated in quality, and prior notice is given to  
6094 the public thereof;

6095 (c) by an officer acting under the orders of any court;

6096 (d) in an endeavor made in good faith to meet the legal prices of a competitor as  
6097 herein defined selling the same article, product or commodity in the same locality or trade  
6098 area;

6099 (e) by manufacturers, producers, brokers or wholesale distributors meeting in good  
6100 faith prices established by interstate competition regardless of cost; provided, such prices are  
6101 available to all persons buying on like terms and conditions in the same locality and vicinity.

6102 (2) Any person, who performs work upon, renovates, alters or improves any personal  
6103 property belonging to another person, except necessary repairs due to damage in transit, shall  
6104 be construed to be a vendor within the meaning of this chapter.

6105 Section 196. Section **13-5-16** is amended to read:

6106           **13-5-16. Separability clause.**

6107           If any section, sentence, clause or phrase of this act is for any reason held to be  
6108 unconstitutional, such decision [~~shall not~~] does not affect the validity of the remaining  
6109 portions of the act. The Legislature hereby declares that it would have passed this act, and  
6110 each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more  
6111 other sections, sentences, clauses or phrases be declared unconstitutional.

6112           Section 197. Section **13-7-1** is amended to read:

6113           **13-7-1. Policy and purposes of act.**

6114           It is hereby declared that the practice of discrimination on the basis of race, color, sex,  
6115 religion, ancestry, or national origin in business establishments or places of public  
6116 accommodation or in enterprises regulated by the state endangers the health, safety, and  
6117 general welfare of this state and its inhabitants; and that such discrimination in business  
6118 establishments or places of public accommodation or in enterprises regulated by the state,  
6119 violates the public policy of this state. It is the purpose of this act to assure all citizens full and  
6120 equal availability of all goods, services and facilities offered by business establishments and  
6121 places of public accommodation and enterprises regulated by the state without discrimination  
6122 because of race, color, sex, religion, ancestry, or national origin. The rules of common law that  
6123 statutes in derogation thereof shall be strictly construed has no application to this act. This act  
6124 shall be liberally construed with a view to promote the policy and purposes of the act and to  
6125 promote justice. The remedies provided herein [~~shall not be~~] are not exclusive but [~~shall be~~]  
6126 are in addition to any other remedies available at law or equity.

6127           Section 198. Section **13-7-2** is amended to read:

6128           **13-7-2. Definitions.**

6129           (1) The term "place of public accommodation" includes every place, establishment, or  
6130 facility of whatever kind, nature, or class that caters or offers its services, facilities, or goods to  
6131 the general public for a fee or charge, except, any establishment located within a building  
6132 which contains not more than five rooms for rent or hire and which is actually occupied by the  
6133 proprietor of such establishment as his residence; provided that any place, establishment, or

6134 facility that caters or offers its services, facilities, or goods to the general public gratuitously  
6135 shall be within the definition of this term if it receives any substantial governmental subsidy or  
6136 support; but the term [~~shall not~~] does not apply to any institution, church, any apartment  
6137 house, club, or place of accommodation which is in its nature distinctly private except to the  
6138 extent that it is open to the public.

6139 (2) The term "person" includes one or more individuals, partnerships, associations,  
6140 organizations, corporations, labor unions, legal representatives, trustees, trustees in  
6141 bankruptcy, receivers, and other organized groups of persons.

6142 (3) "Enterprises regulated by the state" means:

6143 (a) all institutions subject to regulation under Title 70C, Utah Consumer Credit Code;

6144 (b) all places of business which sell beer to consumers or house a state liquor store, as  
6145 permitted by Title 32A, Alcoholic Beverage Control Act;

6146 (c) all insurers regulated by Title 31A, Insurance Code; and

6147 (d) all public utilities subject to regulation under Title 54, Public Utilities Act.

6148 Section 199. Section **13-11-6** is amended to read:

6149 **13-11-6. Service of process.**

6150 In addition to any other method provided by rule or statute, personal jurisdiction over a  
6151 supplier may be acquired in a civil action or proceeding instituted in the district court by the  
6152 service of process in the following manner. If a supplier engages in any act or practice in this  
6153 state governed by this act, or engages in a consumer transaction subject to this act, he may  
6154 designate an agent upon whom service of process may be made in this state. The agent [~~must~~]  
6155 shall be a resident of or a corporation authorized to do business in this state. The designation  
6156 [~~must~~] shall be in writing and filed with the Division of Corporations and Commercial Code.  
6157 If no designation is made and filed, or if process cannot be served in this state upon the  
6158 designated agent, whether or not the supplier is a resident of this state or is authorized to do  
6159 business in this state, process may be served upon the director of the Division of Corporations  
6160 and Commercial Code, but service upon him is not effective unless the plaintiff promptly  
6161 mails a copy of the process and pleadings by registered or certified mail to the defendant at his

6162 last reasonably ascertainable address. An affidavit of compliance with this section [must]  
6163 shall be filed with the clerk of the court on or before the return day of the process, if any, or  
6164 within any future time the court allows.

6165 Section 200. Section **13-11-19** is amended to read:

6166 **13-11-19. Actions by consumer.**

6167 (1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at  
6168 law, a consumer may bring an action to:

6169 (a) obtain a declaratory judgment that an act or practice violates this chapter; and

6170 (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is  
6171 violating, or is likely to violate this chapter.

6172 (2) A consumer who suffers loss as a result of a violation of this chapter may recover,  
6173 but not in a class action, actual damages or \$2,000, whichever is greater, plus court costs.

6174 (3) Whether a consumer seeks or is entitled to recover damages or has an adequate  
6175 remedy at law, he may bring a class action for declaratory judgment, an injunction, and  
6176 appropriate ancillary relief against an act or practice that violates this chapter.

6177 (4) (a) A consumer who suffers loss as a result of a violation of this chapter may bring  
6178 a class action for the actual damages caused by an act or practice specified as violating this  
6179 chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the  
6180 consumer transactions on which the action is based, or declared to violate Section 13-11-4 or  
6181 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and  
6182 appellate courts of this state that was either officially reported or made available for public  
6183 dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the  
6184 consumer transactions on which the action is based, or with respect to a supplier who agreed  
6185 to it, was prohibited specifically by the terms of a consent judgment which became final  
6186 before the consumer transactions on which the action is based.

6187 (b) If an act or practice that violates this chapter unjustly enriches a supplier and the  
6188 damages can be computed with reasonable certainty, damages recoverable on behalf of  
6189 consumers who cannot be located with due diligence shall be transferred to the state treasurer

6190 pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

6191 (c) If a supplier shows by a preponderance of the evidence that a violation of this  
6192 chapter resulted from a bona fide error notwithstanding the maintenance of procedures  
6193 reasonably adapted to avoid the error, recovery under this section is limited to the amount, if  
6194 any, in which the supplier was unjustly enriched by the violation.

6195 (5) Except for services performed by the enforcing authority, the court may award to  
6196 the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

6197 (a) the consumer complaining of the act or practice that violates this chapter has  
6198 brought or maintained an action he knew to be groundless; or a supplier has committed an act  
6199 or practice that violates this chapter; and

6200 (b) an action under this section has been terminated by a judgment or required by the  
6201 court to be settled under Subsection 13-11-21(1)(a).

6202 (6) Except for consent judgment entered before testimony is taken, a final judgment in  
6203 favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence  
6204 of the facts on which it is based in later proceedings under this section against the same person  
6205 or a person in privity with him.

6206 (7) When a judgment under this section becomes final, the prevailing party shall mail  
6207 a copy to the enforcing authority for inclusion in the public file maintained under Subsection  
6208 13-11-7(1)(e).

6209 (8) An action under this section [~~must~~] shall be brought within two years after  
6210 occurrence of a violation of this chapter, or within one year after the termination of  
6211 proceedings by the enforcing authority with respect to a violation of this chapter, whichever is  
6212 later. When a supplier sues a consumer, he may assert as a counterclaim any claim under this  
6213 chapter arising out of the transaction on which suit is brought.

6214 Section 201. Section **13-11-20** is amended to read:

6215 **13-11-20. Class actions.**

6216 (1) An action may be maintained as a class action under this act only if:

6217 (a) the class is so numerous that joinder of all members is impracticable;

- 6218 (b) there are questions of law or fact common to the class;
- 6219 (c) the claims or defenses of the representative parties are typical of the claims or  
6220 defenses of the class;
- 6221 (d) the representative parties will fairly and adequately protect the interests of the  
6222 class; and
- 6223 (e) either:
- 6224 (i) the prosecution of separate actions by or against individual members of the class  
6225 would create a risk of:
- 6226 (A) inconsistent or varying adjudications with respect to individual members of the  
6227 class which would establish incompatible standards of conduct for the party opposing the  
6228 class; or
- 6229 (B) adjudications with respect to individual members of the class that would as a  
6230 practical matter dispose of the interests of the other members not parties to the adjudications  
6231 or substantially impair or impede their ability to protect their interests; or
- 6232 (ii) the party opposing the class has acted or refused to act on grounds generally  
6233 applicable to the class, thereby making appropriate final injunctive relief or corresponding  
6234 declaratory relief with respect to the class as a whole; or
- 6235 (iii) the court finds that the questions of law or fact common to the members of the  
6236 class predominate over any questions affecting only individual members, and that a class  
6237 action is superior to other available methods for the fair and efficient adjudication of the  
6238 controversy.
- 6239 (2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:
- 6240 (a) the interest of members of the class in individually controlling the prosecution or  
6241 defense of separate actions;
- 6242 (b) the extent and nature of any litigation concerning the controversy already  
6243 commenced by or against members of the class;
- 6244 (c) the desirability or undesirability of concentrating the litigation of the claims in the  
6245 particular forum; and

6246 (d) the difficulties likely to be encountered in the management of a class action.

6247 (3) As soon as practicable after the commencement of an action brought as a class  
6248 action, the court shall determine by order whether it is to be so maintained. An order under  
6249 this subsection may be conditional, and it may be amended before decision on the merits.

6250 (4) In a class action maintained under Subsection (1)(e) the court may direct to the  
6251 members of the class the best notice practicable under the circumstances, including individual  
6252 notice to each member who can be identified through reasonable effort. The notice shall  
6253 advise each member that:

6254 (a) the court will exclude him from the class, unless he requests inclusion, by a  
6255 specified date;

6256 (b) the judgment, whether favorable or not, will include all members who request  
6257 inclusion; and

6258 (c) a member who requests inclusion may, if he desires, enter an appearance through  
6259 his counsel.

6260 (5) When appropriate, an action may be brought or maintained as a class action with  
6261 respect to particular issues, or a class may be divided into subclasses and each subclass treated  
6262 as a class.

6263 (6) In the conduct of a class action the court may make appropriate orders:

6264 (a) determining the course of proceedings or prescribing measures to prevent undue  
6265 repetition or complication in the presentation of evidence or argument;

6266 (b) requiring, for the protection of the members of the class or otherwise for the fair  
6267 conduct of the action, that notice be given in the manner the court directs to some or all of the  
6268 members or to the enforcing authority of any step in the action, or of the proposed extent of  
6269 the judgment, or of the opportunity of members to signify whether they consider the  
6270 representation fair and adequate, to intervene and present claims or defenses, or otherwise to  
6271 come into the action;

6272 (c) imposing conditions on the representative parties or on intervenors;

6273 (d) requiring that the pleadings be amended to eliminate allegations as to

6274 representation of absent persons, and that the action proceed accordingly; or

6275 (e) dealing with similar procedural matters.

6276 (7) A class action [~~shall not~~] may not be dismissed or compromised without approval  
6277 of the court. Notice of the proposed dismissal or compromise shall be given to all members of  
6278 the class as the court directs.

6279 (8) The judgment in an action maintained as a class action under Subsection (1)(e)(i)  
6280 or (ii), whether or not favorable to the class, shall describe those whom the court finds to be  
6281 members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or  
6282 not favorable to the class, shall specify or describe those to whom the notice provided in  
6283 Subsection (4) was directed, and who have requested inclusion, and whom the court finds to  
6284 be members of the class.

6285 Section 202. Section **13-11a-3** is amended to read:

6286 **13-11a-3. Deceptive trade practices enumerated -- Records to be kept --**  
6287 **Defenses.**

6288 (1) Deceptive trade practices occur when, in the course of a person's business,  
6289 vocation, or occupation that person:

6290 (a) passes off goods or services as those of another;

6291 (b) causes likelihood of confusion or of misunderstanding as to the source,  
6292 sponsorship, approval, or certification of goods or services;

6293 (c) causes likelihood of confusion or of misunderstanding as to affiliation, connection,  
6294 association with, or certification by another;

6295 (d) uses deceptive representations or designations of geographic origin in connection  
6296 with goods or services;

6297 (e) represents that goods or services have sponsorship, approval, characteristics,  
6298 ingredients, uses, benefits, or qualities that they do not have or that a person has a  
6299 sponsorship, approval, status, affiliation, or connection that the person does not have;

6300 (f) represents that goods are original or new if they are deteriorated, altered,  
6301 reconditioned, reclaimed, used, or second-hand;

6302 (g) represents that goods or services are of a particular standard, quality, or grade, or  
6303 that goods are of a particular style or model, if they are of another;

6304 (h) disparages the goods, services, or business of another by false or misleading  
6305 representation of fact;

6306 (i) advertises goods or services or the price of goods and services with intent not to sell  
6307 them as advertised;

6308 (j) advertises goods or services with intent not to supply a reasonable expectable  
6309 public demand, unless:

6310 (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

6311 (ii) the person issues rainchecks for the advertised goods or services;

6312 (k) makes false or misleading statements of fact concerning the reasons for, existence  
6313 of, or amounts of price reductions;

6314 (l) makes a comparison between the person's own sale or discount price and a  
6315 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;

6316 (m) without clearly and conspicuously disclosing the date of the price assessment  
6317 makes a price comparison with the goods of another based upon a price assessment performed  
6318 more than seven days prior to the date of the advertisement or uses in an advertisement the  
6319 results of a price assessment performed more than seven days prior to the date of the  
6320 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio  
6321 or television ad, the time frame of the price assessment;

6322 (n) advertises or uses in a price assessment or comparison a price that is not that  
6323 person's own unless this fact is:

6324 (i) clearly and conspicuously disclosed; and

6325 (ii) the representation of the price is accurate;

6326 (o) represents as independent an audit, accounting, price assessment, or comparison of  
6327 prices of goods or services, when the audit, accounting, price assessment, or comparison is not  
6328 independent;

6329 (p) represents, in an advertisement of a reduction from the supplier's own prices, that

6330 the reduction is from a regular price, when the former price is not a regular price as defined in  
6331 Subsection 13-11a-2(14);

6332 (q) advertises a price comparison or the result of a price assessment or comparison that  
6333 uses, in any way, an identified competitor's price without clearly and conspicuously disclosing  
6334 the identity of the price assessor and any relationship between the price assessor and the  
6335 supplier;

6336 (r) makes a price comparison between a category of the supplier's goods and the same  
6337 category of the goods of another, without randomly selecting the individual goods or services  
6338 upon whose prices the comparison is based;

6339 (s) makes a comparison between similar but nonidentical goods or services unless the  
6340 nonidentical goods or services are of essentially similar quality to the advertised goods or  
6341 services or the dissimilar aspects are clearly and conspicuously disclosed in the  
6342 advertisements; or

6343 (t) engages in any other conduct which similarly creates a likelihood of confusion or of  
6344 misunderstanding.

6345 (2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect  
6346 for less than one week from the advertisement date, the advertisement [~~must~~] shall clearly and  
6347 conspicuously disclose the specific time period during which the price will be in effect.

6348 (b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the  
6349 price [~~must~~] shall be one at which the competitor offered the goods or services for sale in the  
6350 product area at the time of the price assessment, and [~~must not~~] may not be an isolated price.

6351 (c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or  
6352 comparison shall be independent if the price assessor randomly selects the goods to be  
6353 compared, and the time and place of the comparison, and no agreement or understanding  
6354 exists between the supplier and the price assessor that could cause the results of the assessment  
6355 to be fraudulent or deceptive. The independence of an audit, accounting, or price comparison  
6356 is not invalidated merely because the advertiser pays a fee for the audit, accounting, or price  
6357 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or

6358 part-time employee of the advertiser.

6359 (d) Examples of a disclosure that complies with Subsection (1)(q) are:

6360 (i) "Price assessment performed by Store Z";

6361 (ii) "Price assessment performed by a certified public accounting firm"; or

6362 (iii) "Price assessment performed by employee of Store Y".

6363 (e) For the purposes of Subsection (1)(r), goods or services are randomly selected

6364 when the supplier has no advance knowledge of what goods and services will be surveyed by

6365 the price assessor, and when the supplier certifies its lack of advance knowledge by an

6366 affidavit to be retained in the supplier's records for one year.

6367 (f) (i) It is prima facie evidence of compliance with Subsection (1)(s) if:

6368 (A) the goods compared are substantially the same size; and

6369 (B) the goods compared are of substantially the same quality, which may include

6370 similar models of competing brands of goods, or goods made of substantially the same

6371 materials and made with substantially the same workmanship.

6372 (ii) It is prima facie evidence of a deceptive comparison under this section when the

6373 prices of brand name goods and generic goods are compared.

6374 (3) Any supplier who makes a comparison with a competitor's price in advertising

6375 shall maintain for a period of one year records that disclose the factual basis for such price

6376 comparisons and from which the validity of such claim can be established.

6377 (4) It is a defense to any claim of false or deceptive price representations under this

6378 chapter that a person:

6379 (a) has no knowledge that the represented price is not genuine; and

6380 (b) has made reasonable efforts to determine whether the represented price is genuine.

6381 (5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in

6382 which a supplier compares the price of a single item of its goods or services with those of

6383 another.

6384 (6) To prevail in an action under this chapter, a complainant need not prove

6385 competition between the parties or actual confusion or misunderstanding.

6386 (7) This chapter does not affect unfair trade practices otherwise actionable at common  
6387 law or under other statutes of this state.

6388 Section 203. Section **13-12-3** is amended to read:

6389 **13-12-3. Refiners or distributors -- Unlawful practices -- Marketing agreements**  
6390 **with dealers.**

6391 No refiner or distributor, directly or indirectly or through any office, agent, or  
6392 employee, shall engage in any of the following practices:

6393 (1) requiring a dealer, at the time of entering into a marketing agreement, to agree to a  
6394 release, assignment, novation, waiver or estoppel which would relieve any person from any  
6395 provision of this act;

6396 (2) prohibiting, directly or indirectly, the right of free association among dealers for  
6397 any lawful purpose;

6398 (3) requiring a dealer to keep his retail outlet open for business for any specified  
6399 number of hours per day, or days per week, unless those requirements are set forth in writing  
6400 at the time of entering into the marketing agreement;

6401 (4) fixing or maintaining the price at which the dealer must sell products, or  
6402 attempting to fix or maintain those prices, through any form of coercion whatsoever; provided,  
6403 that nothing herein shall be construed to prohibit a distributor or refiner from suggesting prices  
6404 or counseling with dealers concerning those prices;

6405 (5) requiring a dealer to use or utilize any promotion, premium, coupon, give-away,  
6406 sales promotion or rebate in the operation of the business; provided that nothing herein shall  
6407 be construed to prohibit a dealer from participating financially in a promotion, premium,  
6408 coupon, give-away, sales promotion or rebate sponsored by the distributor or refiner if agreed  
6409 to voluntarily by the parties;

6410 (6) terminating, canceling or failing to renew any marketing agreement without having  
6411 first given written notice setting forth all the reasons for such termination, cancellation, or  
6412 intent not to renew the dealer at least 90 days in advance of such termination, cancellation, or  
6413 failure to renew, except:

6414 (a) where the alleged grounds are voluntary abandonment by the dealer of the  
6415 marketing agreement relationship in which event the aforementioned written notice [~~must~~  
6416 shall be given five business days in advance of such termination, cancellation, or failure to  
6417 renew; and

6418 (b) where the alleged grounds are caused by the conviction of the dealer or distributor  
6419 in a court of competent jurisdiction of a criminal offense directly related to the business  
6420 conducted pursuant to the marketing agreement, or the bankruptcy of the dealer or distributor,  
6421 in which event the aforementioned termination, cancellation, or failure to renew may be  
6422 effective immediately following such conviction or bankruptcy;

6423 (c) where the alleged grounds are:

6424 (i) failure of the dealer to substantially comply with the requirements of the marketing  
6425 agreement;

6426 (ii) action of the dealer fraudulently advising members of the motoring public of the  
6427 necessity for unneeded automotive repairs, parts or accessories;

6428 (iii) action of the dealer fraudulently representing either expressly or impliedly the  
6429 trade mark or brand of product being sold by the dealer;

6430 (iv) failure of the dealer to maintain the premises in a sufficiently clean and healthful  
6431 manner to avoid constituting a nuisance to members of the motoring public or adjoining  
6432 property owners as determined by the local board of health authority;

6433 in which event the distributor shall provide the dealer with written notice of his intent to  
6434 terminate, cancel or fail to renew, following which the dealer shall be allowed 10 days in  
6435 which to comply, correct or respond to said allegations before further action can be taken by  
6436 the distributor.

6437 Section 204. Section **13-12-4** is amended to read:

6438 **13-12-4. Cancellation provisions -- Dealer or distributor -- Time limit to exercise.**

6439 (1) Every dealer or distributor shall have the right, which may not be waived, to cancel  
6440 his marketing agreement until midnight of the seventh business day after the day on which the  
6441 buyer signs the marketing agreement or, if that agreement is oral, after the day on which the

6442 buyer agrees thereto.

6443 (2) Notice of cancellation shall be deemed to have been given when it is addressed to  
6444 the distributor's or refiner's last known address, postage prepaid, and certified with a return  
6445 receipt requested.

6446 (3) Unless within 10 days after delivery of that notice of cancellation the dealer returns  
6447 to the distributor or refiner any money, equipment or merchandise loaned, sold or delivered to  
6448 the dealer and delivers up full possession of the business location to the distributor or refiner,  
6449 that notice of cancellation shall be null and void ab initio.

6450 (4) (a) Except as provided in this subsection, within 10 days after notice of  
6451 cancellation is delivered to him, the distributor or refiner ~~[must]~~ shall tender to the buyer any  
6452 payments made by the buyer and any note or other evidence of indebtedness.

6453 (b) If the down payment includes goods traded in, the goods ~~[must]~~ shall be tendered  
6454 in substantially as good condition as when received by the distributor or refiner. If the  
6455 distributor or refiner fails to tender the goods as provided by this subsection, the dealer may  
6456 elect to recover an amount equal to the allowance established by their agreement.

6457 (c) Notwithstanding the provisions of Subsection (3) until the distributor or refiner has  
6458 complied with the obligations imposed by this subsection, the dealer may retain possession of  
6459 goods delivered to him by the distributor or refiner and has a lien on the goods in his  
6460 possession or control for any recovery to which he is entitled.

6461 Section 205. Section **13-12-7** is amended to read:

6462 **13-12-7. District court's jurisdiction over violations -- Equitable relief --**  
6463 **Attorney's fees and costs -- Action for failure to renew -- Damages limited.**

6464 The district courts for the district wherein the dealer resides or wherein the dealership  
6465 was to be established shall have jurisdiction over any action involving a violation of this act.  
6466 In addition to such relief as may be available at common law, the courts may grant such  
6467 equitable relief, both interim and final, as may be necessary to remedy those violations  
6468 including~~[, but not limited to,]~~ declaratory judgments, injunctive relief, and punitive damages  
6469 as well as actual damages. The prevailing party may, in the court's sole discretion, be awarded

6470 attorney's fees and expert witness fees in addition to such other relief as the court may deem  
6471 equitable. In any action for failure to renew an agreement, damages shall be limited to actual  
6472 damages, including the value of the dealer's equity in the dealership, together with reasonable  
6473 attorney's fees and costs.

6474 Section 206. Section **13-13-4** is amended to read:

6475 **13-13-4. Payment of percentage of receipts.**

6476 If an exhibitor is required by a license agreement to make any payment to the  
6477 distributor that is based on a percentage of the theatre box office receipts the license agreement  
6478 [~~shall not~~] may not require a guarantee of a minimum payment to the distributor or require the  
6479 exhibitor to charge any per capita amount for ticket sales.

6480 Section 207. Section **13-14b-103** is amended to read:

6481 **13-14b-103. Warranty claims.**

6482 (1) An equipment dealer may submit a warranty claim to a supplier if a warranty  
6483 defect is identified and documented prior to the expiration of a supplier's warranty:

6484 (a) while a dealer agreement is in effect; or

6485 (b) after the termination of a dealer agreement if the claim is for work performed while  
6486 the dealer agreement was in effect.

6487 (2) (a) A supplier shall accept or reject a warranty claim submitted under Subsection  
6488 (1) within 30 days of the date the supplier received the claim.

6489 (b) A warranty claim not rejected within 30 days of the date the supplier received the  
6490 claim is considered to be accepted by the supplier.

6491 (3) No later than 30 days after the date a warranty claim is accepted or rejected under  
6492 Subsection (2), the supplier shall:

6493 (a) pay an accepted warranty claim; or

6494 (b) send the dealer written notice of the reason the warranty claim was rejected.

6495 (4) (a) (i) A supplier shall compensate the dealer for the warranty claim as follows:

6496 (A) the dealer's established customer hourly retail labor rate multiplied by the  
6497 reasonable and customary amount of time required to complete such work, including

6498 diagnostic time, expressed in hours and fractions of an hour;

6499 (B) the dealer's current net price plus 20% for parts to reimburse the dealer for  
6500 reasonable costs of doing business in performing the warranty service on the supplier's behalf;  
6501 and

6502 (C) extraordinary freight and handling costs.

6503 (ii) For purposes of Subsection (4)(a)(i)(C), "extraordinary freight and handling costs"  
6504 mean costs that are above and beyond the normal reimbursement policy of the supplier for  
6505 warranty repair work.

6506 (b) (i) The supplier [~~must~~] shall give due consideration to any extraordinary expenses  
6507 incurred by the dealer in performing necessary warranty repairs.

6508 (ii) If the repair work is for safety or mandatory modifications ordered by the supplier,  
6509 the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

6510 (5) After payment of a warranty claim, a supplier may not charge back, off-set, or  
6511 otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

6512 (a) the warranty claim was fraudulent;

6513 (b) the services for which the warranty claim was made were not properly performed  
6514 or were unnecessary to comply with the warranty; or

6515 (c) the dealer did not substantiate the warranty claim according to the written  
6516 requirements of the supplier that were in effect when the equipment was delivered to the dealer  
6517 by the customer for warranty repairs.

6518 (6) If a supplier denies a warranty claim due to a particular item or part of the claim,  
6519 the denial shall only affect the items or parts in question and not the complete warranty claim.

6520 (7) A supplier may not pass the cost of covering warranty claims under this chapter on  
6521 to a dealer through any means including:

6522 (a) surcharges;

6523 (b) reduction of discounts; or

6524 (c) certification standards.

6525 (8) (a) The provisions of this chapter do not apply to a supplier or dealer where a

6526 written dealer agreement provides for compensation to a dealer for warranty labor and parts  
6527 costs either as part of the pricing of the equipment to the dealer or in the form of a lump-sum  
6528 payment.

6529 (b) The lump-sum payment under Subsection (8)(a) [~~must~~] shall be at least 5% of the  
6530 suggested retail price of the equipment.

6531 Section 208. Section **13-15-4** is amended to read:

6532 **13-15-4. Information to be filed by seller -- Representations.**

6533 (1) Any seller of an assisted marketing plan shall file the following information with  
6534 the division:

6535 (a) the name, address, and principal place of business of the seller, and the name,  
6536 address, and principal place of business of the parent or holding company of the seller, if any,  
6537 who is responsible for statements made by the seller;

6538 (b) all trademarks, trade names, service marks, or advertising or other commercial  
6539 symbols that identify the products, equipment, supplies, or services to be offered, sold, or  
6540 distributed by the prospective purchaser;

6541 (c) an individual detailed statement covering the past five years of the business  
6542 experience of each of the seller's current directors and executive officers and an individual  
6543 statement covering the same period for the seller and the seller's parent company, if any,  
6544 including the length of time each:

6545 (i) has conducted a business of the type advertised or solicited for operation by a  
6546 prospective purchaser;

6547 (ii) has offered or sold the assisted marketing plan; and

6548 (iii) has offered for sale or sold assisted marketing plans in other lines of business,  
6549 together with a description of the other lines of business;

6550 (d) a statement of the total amount that [~~must~~] shall be paid by the purchaser to obtain  
6551 or commence the business opportunity such as initial fees, deposits, down payments, prepaid  
6552 rent, and equipment and inventory purchases; provided, that if all or part of these fees or  
6553 deposits are returnable, the conditions under which they are returnable shall also be disclosed;

- 6554 (e) a complete statement of the actual services the seller will perform for the  
6555 purchaser;
- 6556 (f) a complete statement of all oral, written, or visual representations that will be made  
6557 to prospective purchasers about specific levels of potential sales, income, gross and net profits,  
6558 or any other representations that suggest a specific level;
- 6559 (g) a complete description of the type and length of any training promised to  
6560 prospective purchasers;
- 6561 (h) a complete description of any services promised to be performed by the seller in  
6562 connection with the placement of the equipment, products, or supplies at any location from  
6563 which they will be sold or used; and a complete description of those services together with any  
6564 agreements that will be made by the seller with the owner or manager of the location where the  
6565 purchaser's equipment, products, or supplies will be placed;
- 6566 (i) a statement that discloses any person identified in Subsection (1)(a) who:
- 6567 (i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a  
6568 felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement,  
6569 fraudulent conversion, or misappropriation of property;
- 6570 (ii) has been held liable or consented to the entry of a stipulated judgment in any civil  
6571 action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property,  
6572 or the use of untrue or misleading representations in the sale or attempted sale of any real or  
6573 personal property, or upon the use of any unfair, unlawful or deceptive business practice; or
- 6574 (iii) is subject to an injunction or restrictive order relating to business activity as the  
6575 result of an action brought by a public agency;
- 6576 (j) a financial statement of the seller signed by one of the seller's officers, directors,  
6577 trustees, or general or limited partners, under a declaration that certifies that to the signatory's  
6578 knowledge and belief the information in the financial statement is true and accurate; a  
6579 financial statement that is more than 13 months old is unacceptable;
- 6580 (k) a copy of the entire marketing plan contract;
- 6581 (l) the number of marketing plans sold to date, and the number of plans under

6582 negotiation;

6583 (m) geographical information including all states in which the seller's assisted  
6584 marketing plans have been sold, and the number of plans in each such state;

6585 (n) the total number of marketing plans that were cancelled by the seller in the past 12  
6586 months; and

6587 (o) the number of marketing plans that were voluntarily terminated by purchasers  
6588 within the past 12 months and the total number of such voluntary terminations to date.

6589 (2) The seller of an assisted marketing plan filing information under Subsection (1)  
6590 shall pay a fee as determined by the department in accordance with Section 63J-1-504.

6591 (3) Before commencing business in this state, the seller of an assisted marketing plan  
6592 shall file the information required under Subsection (1) and receive from the division proof of  
6593 receipt of the filing.

6594 (4) A seller of an assisted marketing plan claiming an exemption from filing under this  
6595 chapter shall file a notice of claim of exemption from filing with the division. A seller  
6596 claiming an exemption from filing bears the burden of proving the exemption. The division  
6597 shall collect a fee for filing a notice of claim of exemption, as determined by the department in  
6598 accordance with Section 63J-1-504.

6599 (5) A representation described in Subsection (1)(f) shall be relevant to the geographic  
6600 market in which the business opportunity is to be located. When the statements or  
6601 representations are made, a warning after the representation in not less than 12 point upper and  
6602 lower case boldface type shall appear as follows:

6603 CAUTION

6604 No guarantee of earnings or ranges of earnings can be made. The number of purchasers  
6605 who have earned through this business an amount in excess of the amount of their initial  
6606 payment is at least \_\_\_\_\_ which represents \_\_\_\_\_% of the total number of purchasers of this  
6607 business opportunity.

6608 Section 209. Section **13-15-5** is amended to read:

6609 **13-15-5. Disclosure statement furnished to buyer -- Contents.**

6610 All the information required under Section 13-15-4 shall be contained in a single  
6611 disclosure statement or prospectus which shall be provided to any prospective purchaser at  
6612 least 10 business days prior to the earlier of:

6613 (1) the execution by prospective purchaser of any agreement imposing a binding legal  
6614 obligation on such prospective purchaser by which the seller knows or should know, in  
6615 connection with the sale or proposed sale of the "assisted marketing plan"; or

6616 (2) the payment by a prospective purchaser, by which the seller knows or should know  
6617 of any consideration in connection with the sale or proposed sale of the "assisted market plan."

6618 The disclosure statement or prospectus [~~shall not~~] may not contain any material or information  
6619 other than that required under Section 13-15-4. However, the seller may give prospective  
6620 purchasers nondeceptive information other than that contained in the disclosure statement or  
6621 prospectus if it does not contradict the information required to appear in the disclosure  
6622 statement or prospectus. A cover sheet attached to the disclosure statement or prospectus shall  
6623 conspicuously state the name of the seller, the date of issuance of the disclosure statement or  
6624 prospectus, and a notice printed in not less than 12 point upper and lower case boldface type  
6625 as follows:

6626 **INFORMATION FOR PURCHASE OF A MARKETING PLAN:**

6627 To protect you, the State Division of Consumer Protection has required your seller to  
6628 give you this information. The State Division of Consumer Protection has not verified this  
6629 information as to its accuracy. The notice may contain additional precautions deemed  
6630 necessary and pertinent. The seller, in lieu of the information requested by Section 13-15-4,  
6631 may file with the commission and provide to prospective purchasers certified disclosure  
6632 documents authorized for use by the Federal Trade Commission pursuant to Title 16, Chapter  
6633 I, Subchapter d, Trade Regulation Rules, Part 436, "Disclosure Requirements and Prohibitions  
6634 Concerning Franchising and Business Opportunity Ventures."

6635 Section 210. Section **13-32-103** is amended to read:

6636 **13-32-103. Prohibited sales.**

6637 A vendor who is not a manufacturer's or distributor's representative [~~shall not~~] may not

6638 sell or offer for sale or exchange at a swap meet or flea market any:

6639 (1) food product which is manufactured and packaged specifically for consumption by  
6640 a child under two years of age;

6641 (2) nonprescription or over-the-counter drug or medication other than herbal products,  
6642 dietary supplements, botanical extracts, or vitamins; or

6643 (3) cosmetic or personal care product which has an expiration date.

6644 Section 211. Section **13-32-104** is amended to read:

6645 **13-32-104. Receipts and transaction records -- Retention of receipts and**  
6646 **transaction records.**

6647 (1) Every vendor shall maintain receipts or a permanent record book for the  
6648 acquisition of new and unused property which [~~must~~] shall contain:

6649 (a) the date of the transaction on which the property was acquired;

6650 (b) the name and address of the person from whom the property was acquired;

6651 (c) an identification and description of the property acquired;

6652 (d) the price paid for such property; and

6653 (e) the signatures of the person selling the property and the vendor.

6654 (2) The receipt or record for each transaction required by Subsection (1) shall be  
6655 maintained by the vendor for a period of not less than one year following the date of the  
6656 transaction.

6657 Section 212. Section **13-32-107** is amended to read:

6658 **13-32-107. Exemptions.**

6659 The provisions of this chapter [~~shall not~~] do not apply to:

6660 (1) the sale of a motor vehicle or trailer that is required to be registered or is subject to  
6661 the certificate of title laws of this state;

6662 (2) the sale of agricultural products, forestry products, livestock, or food products  
6663 other than those which are manufactured and packaged specifically for consumption by a child  
6664 under two years of age;

6665 (3) business conducted at any industry or association trade show;

6666 (4) the sale of arts or crafts by the person who produced such arts and crafts; and

6667 (5) anyone who displays only samples, catalogs, or brochures and sells property for  
6668 future delivery.

6669 Section 213. Section **13-32a-109.8** is amended to read:

6670 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

6671 (1) If the article pawned or sold under Section 13-32a-109 is subject to an  
6672 investigation and a criminal prosecution results, the prosecuting agency shall, prior to  
6673 disposition of the case:

6674 (a) request restitution to the pawn or secondhand business for the crimes perpetrated  
6675 against the pawn or secondhand business as a victim of theft by deception; and

6676 (b) request restitution for the original victim.

6677 (2) If the original victim of the theft of the property files a police report and the  
6678 property is subsequently located at a pawn or secondhand business, the victim [~~must~~] shall  
6679 fully cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand  
6680 business as a victim of theft by deception, in order to qualify for restitution regarding the  
6681 property.

6682 (3) If the original victim does not pursue criminal charges or does not cooperate in the  
6683 prosecution of the property theft crimes charged against the defendant and the theft by  
6684 deception charges committed against the pawn or secondhand business, then the original  
6685 victim [~~must~~] shall pay to the pawn or secondhand business the amount of money financed or  
6686 paid by the pawn or secondhand business to the defendant in order to obtain the property.

6687 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the  
6688 prosecution of the theft by deception offense committed against the pawn or secondhand  
6689 business suspends the requirements of Subsections (2) and (3).

6690 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the  
6691 defendants are convicted, the prosecuting agency shall direct the pawn or secondhand business  
6692 to turn over the property to the victim.

6693 (c) Upon receipt of notice from the prosecuting agency that the property must be

6694 turned over to the victim, the pawn or secondhand business shall return the property to the  
6695 victim as soon as reasonably possible.

6696 (5) A pawn or secondhand business [~~must~~] shall fully cooperate in the prosecution of  
6697 the property crimes committed against the original victim and the property crime of theft by  
6698 deception committed against the pawn or secondhand business in order to participate in any  
6699 court-ordered restitution.

6700 (6) At all times during the course of a criminal investigation and subsequent  
6701 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or  
6702 secondhand business subject to the hold unless a pawned or sold article has been seized by the  
6703 law enforcement agency pursuant to Section 13-32a-109.5.

6704 Section 214. Section ~~13-34-104~~ is amended to read:

6705 **13-34-104. Prohibited acts -- Exceptions -- Responsibilities of proprietary**  
6706 **schools.**

6707 (1) Except as provided in this chapter, a proprietary school may not offer, sell, or  
6708 award a degree or any other type of educational credential unless the student has enrolled in  
6709 and successfully completed a prescribed program of study as outlined in the proprietary  
6710 school's catalogue.

6711 (2) The prohibition described in Subsection (1) does not apply to:

6712 (a) honorary credentials clearly designated as such on the front side of a diploma; or

6713 (b) certificates and awards by a proprietary school that offers other educational  
6714 credentials requiring enrollment in and successful completion of a prescribed program of study  
6715 in compliance with the requirements of this chapter.

6716 (3) A proprietary school [~~must~~] shall provide bona fide instruction through  
6717 student-faculty interaction.

6718 (4) A proprietary school may not enroll a student in a program unless the proprietary  
6719 school has made a good-faith determination that the student has the ability to benefit from the  
6720 program.

6721 (5) A proprietary school may not make or cause to be made any oral, written, or visual

6722 statement or representation that an institution described in Subsection 13-34-107(2)(a)(ii)  
6723 knows or should know to be:

- 6724 (a) false;
- 6725 (b) deceptive;
- 6726 (c) substantially inaccurate; or
- 6727 (d) misleading.

6728 (6) The division shall establish standards and criteria by rule made in accordance with  
6729 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the following:

- 6730 (a) the awarding of educational credentials;
- 6731 (b) bona fide instruction through student-faculty interaction; and
- 6732 (c) determination of the ability of a student to benefit from a program.

6733 Section 215. Section **13-34-105** is amended to read:

6734 **13-34-105. Exempted institutions.**

6735 (1) This chapter does not apply to the following institutions:

6736 (a) a Utah institution directly supported, to a substantial degree, with funds provided  
6737 by:

- 6738 (i) the state;
- 6739 (ii) a local school district; or
- 6740 (iii) other Utah governmental subdivision;

6741 (b) an institution that offers instruction exclusively at or below the 12th grade level;

6742 (c) a lawful enterprise that offers only professional review programs, such as C.P.A.  
6743 and bar examination review and preparation courses;

6744 (d) a private, postsecondary educational institution that is owned, controlled, operated,  
6745 or maintained by a bona fide church or religious denomination, which is exempted from  
6746 property taxation under the laws of this state;

6747 (e) subject to Subsection (3), a school or institution that is accredited by a regional or  
6748 national accrediting agency recognized by the United States Department of Education;

6749 (f) subject to Subsection (4), a business organization, trade or professional association,

6750 fraternal society, or labor union that:

6751 (i) sponsors or conducts courses of instruction or study predominantly for bona fide  
6752 employees or members; and

6753 (ii) does not, in advertising, describe itself as a school;

6754 (g) an institution that exclusively offers general education courses or instruction solely  
6755 remedial, avocational, nonvocational, or recreational in nature, that does not:

6756 (i) advertise occupation objectives; or

6757 (ii) grant educational credentials;

6758 (h) an institution that offers only workshops or seminars:

6759 (i) lasting no longer than three calendar days; and

6760 (ii) for which academic credit is not awarded;

6761 (i) an institution that offers programs:

6762 (i) in barbering, cosmetology, real estate, or insurance; and

6763 (ii) that are regulated and approved by a state or federal governmental agency;

6764 (j) an education provider certified by the Division of Real Estate under Section  
6765 61-2c-204.1;

6766 (k) an institution that offers aviation training if the institution:

6767 (i) (A) is approved under Part 141, Federal Aviation Regulations, 14 C.F.R. Chapter  
6768 141; or

6769 (B) provides aviation training under Part 61, Federal Aviation Regulations, 14 C.F.R.  
6770 Chapter 61; and

6771 (ii) exclusively offers aviation training that a student fully receives within 24 hours  
6772 after the student pays any tuition, fee, or other charge for the aviation training; and

6773 (l) an institution that provides emergency medical services training if all of the  
6774 institution's instructors, course coordinators, and courses are approved by the Department of  
6775 Health.

6776 (2) (a) If available evidence suggests that an exempt institution under this section is  
6777 not in compliance with the standards of registration under this chapter and applicable division

6778 rules, the division shall contact the institution and, if appropriate, the state or federal  
6779 government agency to request corrective action.

6780 (b) Subsection (2)(a) does not apply to an institution exempted under Subsection  
6781 (1)(e).

6782 (3) An institution, branch, extension, or facility operating within the state that is  
6783 affiliated with an institution operating in another state [~~must~~] shall be separately approved by  
6784 the affiliate's regional or national accrediting agency to qualify for the exemption described in  
6785 Subsection (1)(e).

6786 (4) For purposes of Subsection (1)(f), a business organization, trade or professional  
6787 association, fraternal society, or labor union is considered to be conducting the course  
6788 predominantly for bona fide employees or members if it hires a majority of the persons who:

6789 (a) successfully complete its course of instruction or study with a reasonable degree of  
6790 proficiency; and

6791 (b) apply for employment with that same entity.

6792 Section 216. Section **13-34-107** is amended to read:

6793 **13-34-107. Advertising, recruiting, or operating a proprietary school -- Required**  
6794 **registration statement or exemption -- Certificate of registration -- Registration does not**  
6795 **constitute endorsement.**

6796 (1) (a) Unless an institution complies with Subsection (1)(b), the institution may not  
6797 do any of the following in this state:

- 6798 (i) advertise a proprietary school;
- 6799 (ii) recruit students for a proprietary school; or
- 6800 (iii) operate a proprietary school.

6801 (b) An institution may not engage in an activity described in Subsection (1)(a) unless  
6802 the institution:

6803 (i) (A) files with the division a registration statement relating to the proprietary school  
6804 that is in compliance with:

6805 (I) applicable rules made by the division; and

- 6806 (II) the requirements set forth in this chapter; and  
6807 (B) obtains a certificate of registration; or  
6808 (ii) establishes an exemption with the division.
- 6809 (2) (a) The registration statement or exemption described in Subsection (1) shall be:  
6810 (i) verified by the oath or affirmation of the owner or a responsible officer of the  
6811 proprietary school filing the registration statement or exemption; and  
6812 (ii) include a certification as to whether any of the following has violated laws, federal  
6813 regulations, or state rules as determined in a criminal, civil, or administrative proceeding:  
6814 (A) the proprietary school; or  
6815 (B) any of the following with respect to the proprietary school:  
6816 (I) an owner;  
6817 (II) an officer;  
6818 (III) a director;  
6819 (IV) an administrator;  
6820 (V) a faculty member;  
6821 (VI) a staff member; or  
6822 (VII) an agent.
- 6823 (b) The proprietary school shall:  
6824 (i) make available, upon request, a copy of the registration statement, showing the date  
6825 upon which it was filed; and  
6826 (ii) display the certificate of registration obtained from the division in a conspicuous  
6827 place on the proprietary school's premises.
- 6828 (3) (a) A registration statement and the accompanying certificate of registration are not  
6829 transferable.
- 6830 (b) In the event of a change in ownership or in the governing body of the proprietary  
6831 school, the new owner or governing body, within 30 days after the change, shall file a new  
6832 registration statement.
- 6833 (4) Except as provided in Subsection (3)(b), a registration statement or a renewal

6834 statement and the accompanying certificate of registration are effective for a period of two  
6835 years after the date of filing and issuance.

6836 (5) (a) The division shall establish a graduated fee structure for the filing of  
6837 registration statements by various classifications of institutions pursuant to Section 63J-1-504.

6838 (b) Fees are not refundable.

6839 (c) Fees shall be deposited in the Commerce Service Fund pursuant to Section 13-1-2.

6840 (6) (a) Each proprietary school shall:

6841 (i) demonstrate fiscal responsibility at the time the proprietary school files its  
6842 registration statement as prescribed by rules of the division; and

6843 (ii) provide evidence to the division that the proprietary school:

6844 (A) is financially sound; and

6845 (B) can reasonably fulfill commitments to and obligations the proprietary school has  
6846 incurred with students and creditors.

6847 (b) A proprietary school applying for an initial certificate of registration to operate  
6848 shall prepare and submit financial statements and supporting documentation as requested by  
6849 the division.

6850 (c) A proprietary school applying for renewal of a certificate of registration to operate  
6851 or renewal under new ownership [~~must~~] shall provide audited financial statements.

6852 (d) The division may require evidence of financial status at other times when it is in  
6853 the best interest of students to require such information.

6854 (7) (a) A proprietary school applying for an initial certificate of registration or seeking  
6855 renewal shall provide in a form approved by the division:

6856 (i) a surety bond;

6857 (ii) a certificate of deposit; or

6858 (iii) an irrevocable letter of credit.

6859 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
6860 the division may make rules providing for:

6861 (i) the amount of the bond, certificate, or letter of credit required under Subsection

- 6862 (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the  
6863 proprietary school during a school year;
- 6864 (ii) the execution of the bond, certificate, or letter of credit;
- 6865 (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the  
6866 registration term; and
- 6867 (iv) any other matters related to providing the bond, certificate, or letter of credit  
6868 required under Subsection (7)(a).
- 6869 (c) The bond, certificate, or letter of credit shall be used as a protection against loss of  
6870 advanced tuition, book fees, supply fees, or equipment fees:
- 6871 (i) collected by the proprietary school from a student or a student's parent, guardian, or  
6872 sponsor prior to the completion of the program or courses for which it was collected; or
- 6873 (ii) for which the student is liable.
- 6874 (8) (a) Except as provided in Section 13-34-113, the division may not refuse  
6875 acceptance of a registration statement that is:
- 6876 (i) tendered for filing and, based on a preliminary review, appears to be in compliance  
6877 with Subsections (1), (2), and (6); and
- 6878 (ii) accompanied by:
- 6879 (A) the required fee; and
- 6880 (B) one of the following required by Subsection (7):
- 6881 (I) surety bond;
- 6882 (II) certificate of deposit; or
- 6883 (III) irrevocable letter of credit.
- 6884 (b) A certificate of registration is effective upon the date of issuance.
- 6885 (c) The responsibility of compliance is upon the proprietary school and not upon the  
6886 division.
- 6887 (d) (i) If it appears to the division that a registration statement on file may not be in  
6888 compliance with this chapter, the division may advise the proprietary school as to the apparent  
6889 deficiencies.

6890 (ii) After a proprietary school has been notified of a deficiency under Subsection  
6891 (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school,  
6892 accompanied by:

- 6893 (A) the required fee; and
- 6894 (B) one of the following required by Subsection (7):
  - 6895 (I) surety bond;
  - 6896 (II) certificate of deposit; or
  - 6897 (III) irrevocable letter of credit.

6898 (9) The following does not constitute and may not be represented by any person to  
6899 constitute, an endorsement or approval of the proprietary school by either the division or the  
6900 state:

- 6901 (a) an acceptance of:
  - 6902 (i) a registration statement;
  - 6903 (ii) a renewal statement; or
  - 6904 (iii) an amended registration statement; and
- 6905 (b) issuance of a certificate of registration.

6906 Section 217. Section **13-41-102** is amended to read:

6907 **13-41-102. Definitions.**

6908 For purposes of this chapter:

- 6909 (1) "Consumer" means a person who acquires a good or service for consumption.
- 6910 (2) "Division" means the Division of Consumer Protection.
- 6911 (3) (a) "Emergency territory" means the geographical area:
  - 6912 (i) for which there has been a state of emergency declared; and
  - 6913 (ii) that is directly affected by the events giving rise to a state of emergency.
- 6914 (b) "Emergency territory" does not include a geographical area that is affected by the  
6915 events giving rise to a state of emergency only by economic market forces.
- 6916 (4) "Excessive price" means a price for a good or service that exceeds by more than  
6917 10% the average price charged by that person for that good or service in the 30-day period

6918 immediately preceding the day on which the state of emergency is declared.

6919 (5) "Good" means any personal property displayed, held, or offered for sale by a  
6920 merchant that is necessary for consumption or use as a direct result of events giving rise to a  
6921 state of emergency.

6922 (6) "Retail" means the level of distribution where a good or service is typically sold  
6923 directly, or otherwise provided, to a member of the public who is an end-user and does not  
6924 resell the good or service.

6925 (7) "Service" means any activity that is performed in whole or in part for the purpose  
6926 of financial gain including~~[, but not limited to,]~~ personal service, professional service, rental,  
6927 leasing, or licensing for use that is necessary for consumption or use as a direct result of events  
6928 giving rise to a state of emergency.

6929 (8) "State of emergency" means a declaration of:

6930 (a) an emergency or major disaster by the President of the United States of America;

6931 or

6932 (b) a state of emergency by the governor under Section 63K-4-203.

6933 Section 218. Section **13-42-105** is amended to read:

6934 **13-42-105. Application for registration -- Form, fee, and accompanying**  
6935 **documents.**

6936 (1) An application for registration as a provider [~~must~~] shall be in a form prescribed by  
6937 the administrator.

6938 (2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an  
6939 application for registration as a provider [~~must~~] shall be accompanied by:

6940 (a) the fee established by the administrator in accordance with Section 63J-1-504;

6941 (b) the bond required by Section 13-42-113;

6942 (c) identification of all trust accounts required by Section 13-42-122 and an  
6943 irrevocable consent authorizing the administrator to review and examine the trust accounts;

6944 (d) evidence of insurance in the amount of \$250,000:

6945 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the

6946 applicant or a director, employee, or agent of the applicant;

6947       (ii) issued by an insurance company authorized to do business in this state and rated at

6948 least A or equivalent by a nationally recognized rating organization approved by the

6949 administrator;

6950       (iii) with a deductible not exceeding \$5,000;

6951       (iv) payable for the benefit of the applicant, this state, and individuals who are

6952 residents of this state, as their interests may appear; and

6953       (v) not subject to cancellation by the applicant or the insurer until 60 days after written

6954 notice has been given to the administrator;

6955       (e) a record consenting to the jurisdiction of this state containing:

6956       (i) the name, business address, and other contact information of its registered agent in

6957 this state for purposes of service of process; or

6958       (ii) the appointment of the administrator as agent of the provider for purposes of

6959 service of process; and

6960       (f) if the applicant is organized as a not-for-profit entity or is exempt from taxation,

6961 evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal

6962 Revenue Code, 26 U.S.C. Section 501.

6963       (3) (a) The administrator may waive or reduce the insurance requirement in

6964 Subsection 13-42-105(2)(d) if the provider does not:

6965       (i) maintain control of a trust account or receive money paid by an individual pursuant

6966 to a plan for distribution to creditors;

6967       (ii) make payments to creditors on behalf of individuals;

6968       (iii) collect fees by means of automatic payment from individuals; and

6969       (iv) execute any powers of attorney that may be utilized by the provider to collect fees

6970 from or expend funds on behalf of an individual.

6971       (b) A waiver or reduction in insurance requirements allowed by the administrator

6972 under Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the

6973 stated requirements against any continued need for insurance against employee and director

6974 dishonesty.

6975 Section 219. Section **13-42-106** is amended to read:

6976 **13-42-106. Application for registration -- Required information.**

6977 An application for registration [~~must~~] shall be signed under penalty of perjury and  
6978 include:

6979 (1) the applicant's name, principal business address and telephone number, and all  
6980 other business addresses in this state, electronic-mail addresses, and Internet website  
6981 addresses;

6982 (2) all names under which the applicant conducts business;

6983 (3) the address of each location in this state at which the applicant will provide  
6984 debt-management services or a statement that the applicant will have no such location;

6985 (4) the name and home address of each officer and director of the applicant and each  
6986 person that owns at least 10% of the applicant;

6987 (5) identification of every jurisdiction in which, during the five years immediately  
6988 preceding the application:

6989 (a) the applicant or any of its officers or directors has been licensed or registered to  
6990 provide debt-management services; or

6991 (b) individuals have resided when they received debt-management services from the  
6992 applicant;

6993 (6) a statement describing, to the extent it is known or should be known by the  
6994 applicant, any material civil or criminal judgment or litigation and any material administrative  
6995 or enforcement action by a governmental agency in any jurisdiction against the applicant, any  
6996 of its officers, directors, owners, or agents, or any person who is authorized to have access to  
6997 the trust account required by Section 13-42-122;

6998 (7) the applicant's financial statements, audited by an accountant licensed to conduct  
6999 audits, for each of the two years immediately preceding the application or, if it has not been in  
7000 operation for the two years preceding the application, for the period of its existence;

7001 (8) evidence of accreditation by an independent accrediting organization approved by

7002 the administrator;

7003 (9) evidence that, within 12 months after initial employment, each of the applicant's  
7004 counselors becomes certified as a certified counselor;

7005 (10) a description of the three most commonly used educational programs that the  
7006 applicant provides or intends to provide to individuals who reside in this state and a copy of  
7007 any materials used or to be used in those programs;

7008 (11) a description of the applicant's financial analysis and initial budget plan,  
7009 including any form or electronic model, used to evaluate the financial condition of individuals;

7010 (12) a copy of each form of agreement that the applicant will use with individuals who  
7011 reside in this state;

7012 (13) the schedule of fees and charges that the applicant will use with individuals who  
7013 reside in this state;

7014 (14) at the applicant's expense, the results of a criminal records check, including  
7015 fingerprints, conducted within the immediately preceding 12 months, covering every officer of  
7016 the applicant and every employee or agent of the applicant who is authorized to have access to  
7017 the trust account required by Section 13-42-122;

7018 (15) the names and addresses of all employers of each director during the 10 years  
7019 immediately preceding the application;

7020 (16) a description of any ownership interest of at least 10% by a director, owner, or  
7021 employee of the applicant in:

7022 (a) any affiliate of the applicant; or

7023 (b) any entity that provides products or services to the applicant or any individual  
7024 relating to the applicant's debt-management services;

7025 (17) a statement of the amount of compensation of the applicant's five most highly  
7026 compensated employees for each of the three years immediately preceding the application or,  
7027 if it has not been in operation for the three years preceding the application, for the period of its  
7028 existence;

7029 (18) the identity of each director who is an affiliate, as defined in Subsection

7030 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and  
7031 (19) any other information that the administrator reasonably requires to perform the  
7032 administrator's duties under Section 13-42-109.  
7033 Section 220. Section **13-42-111** is amended to read:  
7034 **13-42-111. Renewal of registration.**  
7035 (1) A provider [~~must~~] shall obtain a renewal of its registration annually.  
7036 (2) An application for renewal of registration as a provider [~~must~~] shall be in a form  
7037 prescribed by the administrator, signed under penalty of perjury, and:  
7038 (a) be filed no fewer than 30 and no more than 60 days before the registration expires;  
7039 (b) be accompanied by the fee established by the administrator in accordance with  
7040 Section 63J-1-504 and the bond required by Section 13-42-113;  
7041 (c) contain the matter required for initial registration as a provider by Subsections  
7042 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct  
7043 audits, for the applicant's fiscal year immediately preceding the application;  
7044 (d) disclose any changes in the information contained in the applicant's application for  
7045 registration or its immediately previous application for renewal, as applicable;  
7046 (e) supply evidence of insurance in an amount equal to the larger of \$250,000 or the  
7047 highest daily balance in the trust account required by Section 13-42-122 during the six-month  
7048 period immediately preceding the application:  
7049 (i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the  
7050 applicant or a director, employee, or agent of the applicant;  
7051 (ii) issued by an insurance company authorized to do business in this state and rated at  
7052 least A or equivalent by a nationally recognized rating organization approved by the  
7053 administrator;  
7054 (iii) with a deductible not exceeding \$5,000;  
7055 (iv) payable for the benefit of the applicant, this state, and individuals who are  
7056 residents of this state, as their interests may appear; and  
7057 (v) not subject to cancellation by the applicant or the insurer until 60 days after written

7058 notice has been given to the administrator;

7059 (f) disclose the total amount of money received by the applicant pursuant to plans  
7060 during the preceding 12 months from or on behalf of individuals who reside in this state and  
7061 the total amount of money distributed to creditors of those individuals during that period;

7062 (g) disclose, to the best of the applicant's knowledge, the gross amount of money  
7063 accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals  
7064 who reside in this state and with whom the applicant has agreements; and

7065 (h) provide any other information that the administrator reasonably requires to perform  
7066 the administrator's duties under this section.

7067 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)  
7068 and the addresses required by Subsection 13-42-106(4), the administrator shall make the  
7069 information in an application for renewal of registration as a provider available to the public.

7070 (4) If a registered provider files a timely and complete application for renewal of  
7071 registration, the registration remains effective until the administrator, in a record, notifies the  
7072 applicant of a denial and states the reasons for the denial.

7073 (5) If the administrator denies an application for renewal of registration as a provider,  
7074 the applicant, within 30 days after receiving notice of the denial, may appeal and request a  
7075 hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to Section  
7076 13-42-134, while the appeal is pending the applicant shall continue to provide  
7077 debt-management services to individuals with whom it has agreements. If the denial is  
7078 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall  
7079 continue to provide debt-management services to individuals with whom it has agreements  
7080 until, with the approval of the administrator, it transfers the agreements to another registered  
7081 provider or returns to the individuals all unexpended money that is under the applicant's  
7082 control.

7083 (6) (a) The administrator may waive or reduce the insurance requirement in  
7084 Subsection 13-42-111(1)(e) if the provider does not:

7085 (i) maintain control of a trust account or receive money paid by an individual pursuant

7086 to a plan for distribution to creditors;

7087 (ii) make payments to creditors on behalf of individuals;

7088 (iii) collect fees by means of automatic payment from individuals; and

7089 (iv) execute any powers of attorney that may be utilized by the provider to collect fees

7090 from or expend funds on behalf of an individual.

7091 (b) A waiver or reduction in insurance requirements allowed by the administrator  
7092 under Subsection (6)(a) shall balance the reduction in risk posed by a provider meeting the  
7093 stated requirements against any continued need for insurance against employee and director  
7094 dishonesty.

7095 Section 221. Section **13-42-113** is amended to read:

7096 **13-42-113. Bond required.**

7097 (1) Except as otherwise provided in Section 13-42-114, a provider that is required to  
7098 be registered under this chapter shall file a surety bond with the administrator, which [~~must~~]  
7099 shall:

7100 (a) be in effect during the period of registration and for two years after the provider  
7101 ceases providing debt-management services to individuals in this state; and

7102 (b) run to this state for the benefit of this state and of individuals who reside in this  
7103 state when they agree to receive debt-management services from the provider, as their interests  
7104 may appear.

7105 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a  
7106 surety bond filed pursuant to Subsection (1) [~~must~~] shall:

7107 (a) be in the amount of \$100,000;

7108 (b) be issued by a bonding, surety, or insurance company authorized to do business in  
7109 this state and rated at least A by a nationally recognized rating organization; and

7110 (c) have payment conditioned upon noncompliance of the provider or its agent with  
7111 this chapter.

7112 (3) If the principal amount of a surety bond is reduced by payment of a claim or a  
7113 judgment, the provider shall immediately notify the administrator and, within 30 days after

7114 notice by the administrator, file a new or additional surety bond in an amount to comply with  
 7115 the \$100,000 requirement. If for any reason a surety terminates a bond, the provider shall  
 7116 immediately file a new surety bond in the amount of \$100,000.

7117 (4) The administrator or an individual may obtain satisfaction out of the surety bond  
 7118 procured pursuant to this section if:

7119 (a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a  
 7120 final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection  
 7121 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

7122 (b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1),  
 7123 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).

7124 (5) If claims against a surety bond exceed or are reasonably expected to exceed the  
 7125 amount of the bond, the administrator, on the initiative of the administrator or on petition of  
 7126 the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims,  
 7127 distribute the proceeds in the following order:

7128 (a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d),  
 7129 or (e) or Subsection 13-42-133(4);

7130 (b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1),  
 7131 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;

7132 (c) to claims of individuals established to the satisfaction of the administrator, pro  
 7133 rata; and

7134 (d) if a final order or judgment is issued under Subsection 13-42-133(1), to the  
 7135 expenses charged pursuant to Subsection 13-42-132(2)(a).

7136 Section 222. Section **13-42-117** is amended to read:

7137 **13-42-117. Prerequisites for providing debt-management services.**

7138 (1) Before providing debt-management services, a registered provider shall give the  
 7139 individual an itemized list of goods and services and the charges for each. The list [~~must~~  
 7140 shall] be clear and conspicuous, be in a record the individual may keep whether or not the  
 7141 individual assents to an agreement, and describe the goods and services the provider offers:

7142 (a) free of additional charge if the individual enters into an agreement;

7143 (b) for a charge if the individual does not enter into an agreement; and

7144 (c) for a charge if the individual enters into an agreement, using the following

7145 terminology, as applicable, and format:

7146 Set-up fee \_\_\_\_\_

7147 dollar amount of fee

7148 Monthly service fee \_\_\_\_\_

7149 dollar amount of fee or method of determining amount

7150 Settlement fee \_\_\_\_\_

7151 dollar amount of fee or method of determining amount

7152 Goods and services in addition to those provided in connection with a plan:

7153 \_\_\_\_\_

7154 (item) dollar amount or method of determining amount

7155 \_\_\_\_\_

7156 (item) dollar amount or method of determining amount.

7157 (2) A provider may not furnish debt-management services unless the provider, through  
7158 the services of a certified counselor:

7159 (a) provides the individual with reasonable education about the management of  
7160 personal finance;

7161 (b) has prepared a financial analysis; and

7162 (c) if the individual is to make regular, periodic payments to a creditor or a provider:

7163 (i) has prepared a plan for the individual;

7164 (ii) has made a determination, based on the provider's analysis of the information

7165 provided by the individual and otherwise available to it, that the plan is suitable for the

7166 individual and the individual will be able to meet the payment obligations under the plan; and

7167 (iii) believes that each creditor of the individual listed as a participating creditor in the  
7168 plan will accept payment of the individual's debts as provided in the plan.

7169 (3) Before an individual assents to an agreement to engage in a plan, a provider shall:

7170 (a) provide the individual with a copy of the analysis and plan required by Subsection  
7171 (2) in a record that identifies the provider and that the individual may keep whether or not the  
7172 individual assents to the agreement;

7173 (b) inform the individual of the availability, at the individual's option, of assistance by  
7174 a toll-free communication system or in person to discuss the financial analysis and plan  
7175 required by Subsection (2); and

7176 (c) with respect to all creditors identified by the individual or otherwise known by the  
7177 provider to be creditors of the individual, provide the individual with a list of:

7178 (i) creditors that the provider expects to participate in the plan and grant concessions;

7179 (ii) creditors that the provider expects to participate in the plan but not grant  
7180 concessions;

7181 (iii) creditors that the provider expects not to participate in the plan; and

7182 (iv) all other creditors.

7183 (4) Before an individual assents to an agreement, the provider shall inform the  
7184 individual, in a record that contains nothing else, that is given separately, and that the  
7185 individual may keep whether or not the individual assents to the agreement:

7186 (a) of the name and business address of the provider;

7187 (b) that plans are not suitable for all individuals and the individual may ask the  
7188 provider about other ways, including bankruptcy, to deal with indebtedness;

7189 (c) that establishment of a plan may adversely affect the individual's credit rating or  
7190 credit scores;

7191 (d) that nonpayment of debt may lead creditors to increase finance and other charges  
7192 or undertake collection activity, including litigation;

7193 (e) unless it is not true, that the provider may receive compensation from the creditors  
7194 of the individual; and

7195 (f) that, unless the individual is insolvent, if a creditor settles for less than the full  
7196 amount of the debt, the plan may result in the creation of taxable income to the individual,  
7197 even though the individual does not receive any money.

7198 (5) If a provider may receive payments from an individual's creditors and the plan  
7199 contemplates that the individual's creditors will reduce finance charges or fees for late  
7200 payment, default, or delinquency, the provider may comply with Subsection (4) by providing  
7201 the following disclosure, surrounded by black lines:

7202 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

7203 (1) Debt-management plans are not right for all individuals, and you may ask us to  
7204 provide information about other ways, including bankruptcy, to deal with your debts.

7205 (2) Using a debt-management plan may make it harder for you to obtain credit.

7206 (3) We may receive compensation for our services from your creditors.

7207

---

7208 Name and business address of provider

7209 (6) If a provider will not receive payments from an individual's creditors and the plan  
7210 contemplates that the individual's creditors will reduce finance charges or fees for late  
7211 payment, default, or delinquency, a provider may comply with Subsection (4) by providing the  
7212 following disclosure, surrounded by black lines:

7213 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

7214 (1) Debt-management plans are not right for all individuals, and you may ask us to  
7215 provide information about other ways, including bankruptcy, to deal with your debts.

7216 (2) Using a debt-management plan may make it harder for you to obtain credit.

7217

---

7218 Name and business address of provider

7219 (7) If an agreement contemplates that creditors will settle debts for less than the full  
7220 principal amount of debt owed, a provider may comply with Subsection (4) by providing the  
7221 following disclosure, surrounded by black lines:

7222 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

7223 (1) Our program is not right for all individuals, and you may ask us to provide  
7224 information about bankruptcy and other ways to deal with your debts.

7225 (2) Nonpayment of your debts under our program may

7226 hurt your credit rating or credit scores;  
 7227 lead your creditors to increase finance and other charges; and  
 7228 lead your creditors to undertake activity, including lawsuits, to collect the debts.  
 7229 (3) Reduction of debt under our program may result in taxable income to you, even  
 7230 though you will not actually receive any money.

7231 \_\_\_\_\_  
 7232 Name and business address of provider

7233 Section 223. Section **13-42-118** is amended to read:

7234 **13-42-118. Communication by electronic or other means.**

7235 (1) In this section:

7236 (a) "Consumer" means an individual who seeks or obtains goods or services that are  
 7237 used primarily for personal, family, or household purposes.

7238 (b) "Federal act" means the Electronic Signatures in Global and National Commerce  
 7239 Act, 15 U.S.C. Section 7001 et seq.

7240 (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or  
 7241 13-42-127 by means of the Internet or other electronic means if the provider obtains a  
 7242 consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

7243 (3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and  
 7244 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later  
 7245 reference.

7246 (4) With respect to disclosure by means of an Internet website, the disclosure of the  
 7247 information required by Subsection 13-42-117(4) [~~must~~] shall appear on one or more screens  
 7248 that:

7249 (a) contain no other information; and

7250 (b) the individual [~~must~~] is able to see before proceeding to assent to formation of an  
 7251 agreement.

7252 (5) At the time of providing the materials and agreement required by Subsections  
 7253 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the

7254 individual that upon electronic, telephonic, or written request, it will send the individual a  
7255 written copy of the materials, and shall comply with a request as provided in Subsection (6).

7256 (6) If a provider is requested, before the expiration of 90 days after an agreement is  
7257 completed or terminated, to send a written copy of the materials required by Subsections  
7258 13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127, the provider shall send them  
7259 at no charge within three business days after the request, but the provider need not comply  
7260 with a request more than once per calendar month or if it reasonably believes the request is  
7261 made for purposes of harassment. If a request is made more than 90 days after an agreement is  
7262 completed or terminated, the provider shall send within a reasonable time a written copy of the  
7263 materials requested.

7264 (7) A provider that maintains an Internet website shall disclose on the home page of its  
7265 website or on a page that is clearly and conspicuously connected to the home page by a link  
7266 that clearly reveals its contents:

7267 (a) its name and all names under which it does business;

7268 (b) its principal business address, telephone number, and electronic-mail address, if  
7269 any; and

7270 (c) the names of its principal officers.

7271 (8) Subject to Subsection (9), if a consumer who has consented to electronic  
7272 communication in the manner provided by Section 101 of the federal act withdraws consent as  
7273 provided in the federal act, a provider may terminate its agreement with the consumer.

7274 (9) If a provider wishes to terminate an agreement with a consumer pursuant to  
7275 Subsection (8), it shall notify the consumer that it will terminate the agreement unless the  
7276 consumer, within 30 days after receiving the notification, consents to electronic  
7277 communication in the manner provided in Section 101(c) of the federal act. If the consumer  
7278 consents, the provider may terminate the agreement only as permitted by Subsection  
7279 13-42-119(1)(f)(vii).

7280 Section 224. Section **13-42-119** is amended to read:

7281 **13-42-119. Form and contents of agreement.**

- 7282 (1) An agreement [~~must~~] shall:
- 7283 (a) be in a record;
- 7284 (b) be dated and signed by the provider and the individual;
- 7285 (c) include the name of the individual and the address where the individual resides;
- 7286 (d) include the name, business address, and telephone number of the provider;
- 7287 (e) be delivered to the individual immediately upon formation of the agreement; and
- 7288 (f) disclose:
- 7289 (i) the services to be provided;
- 7290 (ii) the amount, or method of determining the amount, of all fees, individually
- 7291 itemized, to be paid by the individual;
- 7292 (iii) the schedule of payments to be made by or on behalf of the individual, including
- 7293 the amount of each payment, the date on which each payment is due, and an estimate of the
- 7294 date of the final payment;
- 7295 (iv) if a plan provides for regular periodic payments to creditors:
- 7296 (A) each creditor of the individual to which payment will be made, the amount owed
- 7297 to each creditor, and any concessions the provider reasonably believes each creditor will offer;
- 7298 and
- 7299 (B) the schedule of expected payments to each creditor, including the amount of each
- 7300 payment and the date on which it will be made;
- 7301 (v) each creditor that the provider believes will not participate in the plan and to which
- 7302 the provider will not direct payment;
- 7303 (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);
- 7304 (vii) that the provider may terminate the agreement for good cause, upon return of
- 7305 unexpended money of the individual;
- 7306 (viii) that the individual may cancel the agreement as provided in Section 13-42-120;
- 7307 (ix) that the individual may contact the administrator with any questions or complaints
- 7308 regarding the provider; and
- 7309 (x) the address, telephone number, and Internet address or website of the

7310 administrator.

7311 (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it  
7312 is made available in a format in which the individual may retrieve, save, and print it and the  
7313 individual is notified that it is available.

7314 (3) If the administrator supplies the provider with any information required under  
7315 Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the  
7316 information supplied by the administrator.

7317 (4) An agreement [~~must~~] shall provide that:

7318 (a) the individual has a right to terminate the agreement at any time, without penalty  
7319 or obligation, by giving the provider written or electronic notice, in which event:

7320 (i) the provider will refund all unexpended money that the provider or its agent has  
7321 received from or on behalf of the individual for the reduction or satisfaction of the individual's  
7322 debt;

7323 (ii) with respect to an agreement that contemplates that creditors will settle debts for  
7324 less than the principal amount of debt, the provider will refund 65% of any portion of the  
7325 set-up fee that has not been credited against the settlement fee; and

7326 (iii) all powers of attorney granted by the individual to the provider are revoked and  
7327 ineffective;

7328 (b) the individual authorizes any bank in which the provider or its agent has  
7329 established a trust account to disclose to the administrator any financial records relating to the  
7330 trust account; and

7331 (c) the provider will notify the individual within five days after learning of a creditor's  
7332 final decision to reject or withdraw from a plan and that this notice will include:

7333 (i) the identity of the creditor; and

7334 (ii) the right of the individual to modify or terminate the agreement.

7335 (5) An agreement may confer on a provider a power of attorney to settle the  
7336 individual's debt for no more than 50% of the principal amount of the debt. An agreement  
7337 may not confer a power of attorney to settle a debt for more than 50% of that amount, but may

7338 confer a power of attorney to negotiate with creditors of the individual on behalf of the  
7339 individual. An agreement [~~must~~] shall provide that the provider will obtain the assent of the  
7340 individual after a creditor has assented to a settlement for more than 50% of the principal  
7341 amount of the debt.

7342 (6) An agreement may not:

7343 (a) provide for application of the law of any jurisdiction other than the United States  
7344 and this state;

7345 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section  
7346 2, or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies  
7347 or limits otherwise available forums or procedural rights, including the right to trial by jury,  
7348 that are generally available to the individual under law other than this chapter;

7349 (c) contain a provision that restricts the individual's remedies under this chapter or law  
7350 other than this chapter; or

7351 (d) contain a provision that:

7352 (i) limits or releases the liability of any person for not performing the agreement or for  
7353 violating this chapter; or

7354 (ii) indemnifies any person for liability arising under the agreement or this chapter.

7355 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist  
7356 even if not provided in the agreement. A provision in an agreement which violates Subsection  
7357 (4), (5), or (6) is void.

7358 Section 225. Section **13-42-120** is amended to read:

7359 **13-42-120. Cancellation of agreement -- Waiver.**

7360 (1) An individual may cancel an agreement before midnight of the third business day  
7361 after the individual assents to it, unless the agreement does not comply with Subsection (2) or  
7362 Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the  
7363 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the  
7364 individual [~~must~~] shall give notice in a record to the provider. Notice by mail is given when  
7365 mailed.

7366 (2) An agreement [~~must~~] shall be accompanied by a form that contains in bold-face  
7367 type, surrounded by bold black lines:

7368 **Notice of Right to Cancel**

7369 You may cancel this agreement, without any penalty or obligation, at any time before  
7370 midnight of the third business day that begins the day after you agree to it by electronic  
7371 communication or by signing it.

7372 To cancel this agreement during this period, send an e-mail to  
7373 \_\_\_\_\_ or mail or deliver a signed, dated copy of this  
7374 E-mail address of provider  
7375 notice, or any other written notice to \_\_\_\_\_

7376 **Name of provider**  
7377 at \_\_\_\_\_ before midnight on \_\_\_\_\_.  
7378 **Address of provider** **Date**

7379 If you cancel this agreement within the 3-day period, we will refund all money you  
7380 already have paid us.

7381 You also may terminate this agreement at any later time, but we may not be required to  
7382 refund fees you have paid us.

7383 I cancel this agreement,  
7384 \_\_\_\_\_

7385 **Print your name**

7386 \_\_\_\_\_  
7387 **Signature**

7388 \_\_\_\_\_  
7389 **Date**

7390 (3) If a personal financial emergency necessitates the disbursement of an individual's  
7391 money to one or more of the individual's creditors before the expiration of three days after an  
7392 agreement is signed, an individual may waive the right to cancel. To waive the right, the  
7393 individual [~~must~~] shall send or deliver a signed, dated statement in the individual's own words

7394 describing the circumstances that necessitate a waiver. The waiver [must] shall explicitly  
7395 waive the right to cancel. A waiver by means of a standard form record is void.

7396 Section 226. Section **13-42-121** is amended to read:

7397 **13-42-121. Required language.**

7398 Unless the administrator, by rule, provides otherwise, the disclosures and documents  
7399 required by this chapter [must] shall be in English. If a provider communicates with an  
7400 individual primarily in a language other than English, the provider [must] shall furnish a  
7401 translation into the other language of the disclosures and documents required by this chapter.

7402 Section 227. Section **13-42-122** is amended to read:

7403 **13-42-122. Trust account.**

7404 (1) All money paid to a provider by or on behalf of an individual for distribution to  
7405 creditors pursuant to a plan is held in trust. Within two business days after receipt, the  
7406 provider shall deposit the money in a trust account established for the benefit of individuals to  
7407 whom the provider is furnishing debt-management services.

7408 (2) Money held in trust by a provider is not property of the provider or its designee.  
7409 The money is not available to creditors of the provider or designee, except an individual from  
7410 whom or on whose behalf the provider received money, to the extent that the money has not  
7411 been disbursed to creditors of the individual.

7412 (3) A provider shall:

7413 (a) maintain separate records of account for each individual to whom the provider is  
7414 furnishing debt-management services;

7415 (b) disburse money paid by or on behalf of the individual to creditors of the individual  
7416 as disclosed in the agreement, except that:

7417 (i) the provider may delay payment to the extent that a payment by the individual is  
7418 not final; and

7419 (ii) if a plan provides for regular periodic payments to creditors, the disbursement  
7420 [must] shall comply with the due dates established by each creditor; and

7421 (c) promptly correct any payments that are not made or that are misdirected as a result

7422 of an error by the provider or other person in control of the trust account and reimburse the  
7423 individual for any costs or fees imposed by a creditor as a result of the failure to pay or  
7424 misdirection.

7425 (4) A provider may not commingle money in a trust account established for the benefit  
7426 of individuals to whom the provider is furnishing debt-management services with money of  
7427 other persons.

7428 (5) A trust account [~~must~~] shall at all times have a cash balance equal to the sum of  
7429 the balances of each individual's account.

7430 (6) If a provider has established a trust account pursuant to Subsection (1), the  
7431 provider shall reconcile the trust account at least once a month. The reconciliation [~~must~~]  
7432 shall compare the cash balance in the trust account with the sum of the balances in each  
7433 individual's account. If the provider or its designee has more than one trust account, each trust  
7434 account [~~must~~] shall be individually reconciled.

7435 (7) If a provider discovers, or has a reasonable suspicion of, embezzlement or other  
7436 unlawful appropriation of money held in trust, the provider immediately shall notify the  
7437 administrator by a method approved by the administrator. Unless the administrator by rule  
7438 provides otherwise, within five days thereafter, the provider shall give notice to the  
7439 administrator describing the remedial action taken or to be taken.

7440 (8) If an individual terminates an agreement or it becomes reasonably apparent to a  
7441 provider that a plan has failed, the provider shall promptly refund to the individual all money  
7442 paid by or on behalf of the individual which has not been paid to creditors, less fees that are  
7443 payable to the provider under Section 13-42-123.

7444 (9) Before relocating a trust account from one bank to another, a provider shall inform  
7445 the administrator of the name, business address, and telephone number of the new bank. As  
7446 soon as practicable, the provider shall inform the administrator of the account number of the  
7447 trust account at the new bank.

7448 Section 228. Section **13-42-132** is amended to read:

7449 **13-42-132. Powers of administrator.**

7450           (1) The administrator may act on its own initiative or in response to complaints and  
7451 may receive complaints, take action to obtain voluntary compliance with this chapter, refer  
7452 cases to the attorney general, and seek or provide remedies as provided in this chapter.

7453           (2) The administrator may investigate and examine, in this state or elsewhere, by  
7454 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or  
7455 offers to provide debt-management services, or a person to which a provider has delegated its  
7456 obligations under an agreement or this chapter, to determine compliance with this chapter.

7457 Information that identifies individuals who have agreements with the provider [~~shall not~~] may  
7458 not be disclosed to the public. In connection with the investigation, the administrator may:

7459           (a) charge the person the reasonable expenses necessarily incurred to conduct the  
7460 examination;

7461           (b) require or permit a person to file a statement under oath as to all the facts and  
7462 circumstances of a matter to be investigated; and

7463           (c) seek a court order authorizing seizure from a bank at which the person maintains a  
7464 trust account required by Section 13-42-122, any or all money, books, records, accounts, and  
7465 other property of the provider that is in the control of the bank and relates to individuals who  
7466 reside in this state.

7467           (3) The administrator may adopt rules to implement the provisions of this chapter in  
7468 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

7469           (4) The administrator may enter into cooperative arrangements with any other federal  
7470 or state agency having authority over providers and may exchange with any of those agencies  
7471 information about a provider, including information obtained during an examination of the  
7472 provider.

7473           (5) The administrator shall establish fees in accordance with Section 63J-1-504 to be  
7474 paid by providers for the expense of administering this chapter.

7475           (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in  
7476 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135  
7477 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer

7478 Price Index for All Urban Consumers or, if that index is not available, another index adopted  
7479 by rule by the administrator. The administrator shall adopt a base year and adjust the dollar  
7480 amounts, effective on July 1 of each year, if the change in the index from the base year, as of  
7481 December 31 of the preceding year, is at least 10%. The dollar amount [must] shall be  
7482 rounded to the nearest \$100, except that the amounts in Section 13-42-123 [must] shall be  
7483 rounded to the nearest dollar.

7484 (7) The administrator shall notify registered providers of any change in dollar amounts  
7485 made pursuant to Subsection (6) and make that information available to the public.

7486 Section 229. Section **13-42-137** is amended to read:

7487 **13-42-137. Statute of limitations.**

7488 (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)  
7489 [must] shall be commenced within four years after the conduct that is the basis of the  
7490 administrator's complaint.

7491 (2) An action brought pursuant to Section 13-42-135 [must] shall be commenced  
7492 within two years after the latest of:

7493 (a) the individual's last transmission of money to a provider;

7494 (b) the individual's last transmission of money to a creditor at the direction of the  
7495 provider;

7496 (c) the provider's last disbursement to a creditor of the individual;

7497 (d) the provider's last accounting to the individual pursuant to Subsection  
7498 13-42-127(1);

7499 (e) the date on which the individual discovered or reasonably should have discovered  
7500 the facts giving rise to the individual's claim; or

7501 (f) termination of actions or proceedings by the administrator with respect to a  
7502 violation of the chapter.

7503 (3) The period prescribed in Subsection (2)(e) is tolled during any period during which  
7504 the provider or, if different, the defendant has materially and willfully misrepresented  
7505 information required by this chapter to be disclosed to the individual, if the information so

7506 misrepresented is material to the establishment of the liability of the defendant under this  
7507 chapter.

7508 Section 230. Section **13-42-138** is amended to read:

7509 **13-42-138. Uniformity of application and construction.**

7510 In applying and construing this uniform act, consideration [~~must~~] shall be given to the  
7511 need to promote uniformity of the law with respect to its subject matter among states that  
7512 enact it.

7513 Section 231. Section **14-1-20** is amended to read:

7514 **14-1-20. Preliminary notice requirement.**

7515 (1) Any person furnishing labor, service, equipment, or material for which a payment  
7516 bond claim may be made under this chapter shall provide preliminary notice to the designated  
7517 agent as prescribed by Section 38-1-32, except that this section does not apply:

7518 (a) to a person performing labor for wages; or

7519 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the  
7520 project or improvement for which labor, service, equipment, or material is furnished.

7521 (2) Any person who fails to provide the preliminary notice required by Subsection (1)  
7522 may not make a payment bond claim under this chapter.

7523 (3) The preliminary notice required by Subsection (1) [~~must~~] shall be provided prior to  
7524 commencement of any action on the payment bond.

7525 Section 232. Section **14-2-5** is amended to read:

7526 **14-2-5. Preliminary notice requirement.**

7527 (1) Any person furnishing labor, service, equipment, or material for which a payment  
7528 bond claim may be made under this chapter shall provide preliminary notice to the designated  
7529 agent as prescribed by Section 38-1-32, except that this section does not apply:

7530 (a) to a person performing labor for wages; or

7531 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the  
7532 project or improvement for which labor, service, equipment, or material is furnished.

7533 (2) Any person who fails to provide the preliminary notice required by Subsection (1)

7534 may not make a payment bond claim under this chapter.

7535 (3) The preliminary notice required by Subsection (1) [~~must~~] shall be provided prior to  
7536 commencement of any action on the payment bond.

7537 Section 233. Section **15-2-5** is amended to read:

7538 **15-2-5. Blood donation by minor.**

7539 Notwithstanding any other provision of the law, any minor who has reached the age of  
7540 18 years may give consent to the donation of his blood and to the necessary medical  
7541 procedures to accomplish such donation. Consent [~~shall not~~] may not be subject to  
7542 disaffirmance because of minority. The consent of the parent or parents of a minor [~~shall not~~  
7543 ~~be~~] is not necessary in order to authorize the donation of blood and such medical procedures.

7544 Section 234. Section **15-3-4** is amended to read:

7545 **15-3-4. Effective date of chapter.**

7546 This chapter [~~shall not~~] does not apply to conveyances, releases, sales or contracts  
7547 made prior to July 1, 1929.

7548 Section 235. Section **15-4-2** is amended to read:

7549 **15-4-2. Discharge of co-obligors by judgment.**

7550 A judgment against one or more of several obligors, or against one or more of joint or  
7551 of joint and several obligors, [~~shall not~~] may not discharge a co-obligor who was not a party to  
7552 the proceeding wherein the judgment was rendered.

7553 Section 236. Section **15-4-4** is amended to read:

7554 **15-4-4. Release of co-obligor -- Reservation of rights.**

7555 Subject to the provisions of Section 15-4-3, the obligee's release or discharge of one or  
7556 more of several obligors, or of one or more of joint or of joint and several obligors, [~~shall not~~]  
7557 does not discharge co-obligors against whom the obligee in writing and as part of the same  
7558 transaction as the release or discharge expressly reserves his rights; and in the absence of such  
7559 a reservation of rights shall discharge co-obligors only to the extent provided in Section  
7560 15-4-5.

7561 Section 237. Section **15-4-7** is amended to read:

7562           **15-4-7. Effective date of chapter.**

7563           This chapter [~~shall not~~] does not apply to obligations arising prior to July 1, 1929.

7564           Section 238. Section **15-9-105** is amended to read:

7565           **15-9-105. Registration as an athlete agent -- Form -- Requirements.**

7566           (1) An applicant for registration shall submit an application for registration to the  
7567 division in a form prescribed by the division. An application filed under this section is a  
7568 public record under Title 63G, Chapter 2, Government Records Access and Management Act.  
7569 The application [~~must~~] shall be in the name of an individual and, except as otherwise provided  
7570 in Subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury  
7571 and state or contain:

7572           (a) the name of the applicant and the address of the applicant's principal place of  
7573 business;

7574           (b) the name of the applicant's business or employer, if applicable;

7575           (c) any business or occupation engaged in by the applicant for the five years  
7576 immediately preceding the date of submission of the application;

7577           (d) a description of the applicant's:

7578           (i) formal training as an athlete agent;

7579           (ii) practical experience as an athlete agent; and

7580           (iii) educational background relating to the applicant's activities as an athlete agent;

7581           (e) the names and addresses of three individuals not related to the applicant who are  
7582 willing to serve as references;

7583           (f) the name, sport, and last-known team for each individual for whom the applicant  
7584 acted as an athlete agent during the five years next preceding the date of submission of the  
7585 application;

7586           (g) the names and addresses of all persons who are:

7587           (i) with respect to the athlete agent's business if it is not a corporation, the partners,  
7588 members, officers, managers, associates, or profit-sharers of the business; and

7589           (ii) with respect to a corporation employing the athlete agent, the officers, directors,

7590 and any shareholder of the corporation having an interest of 5% or greater;

7591 (h) whether the applicant or any person named pursuant to Subsection (1)(g) has been  
7592 convicted of a crime that, if committed in this state, would be a crime involving moral  
7593 turpitude or a felony, and identify the crime;

7594 (i) whether there has been any administrative or judicial determination that the  
7595 applicant or any person named pursuant to Subsection (1)(g) has made a false, misleading,  
7596 deceptive, or fraudulent representation;

7597 (j) any instance in which the conduct of the applicant or any person named pursuant to  
7598 Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of  
7599 ineligibility to participate in an interscholastic or intercollegiate athletic event on a  
7600 student-athlete or educational institution;

7601 (k) any sanction, suspension, or disciplinary action taken against the applicant or any  
7602 person named pursuant to Subsection (1)(g) arising out of occupational or professional  
7603 conduct; and

7604 (l) whether there has been any denial of an application for, suspension or revocation  
7605 of, or refusal to renew, the registration or licensure of the applicant or any person named  
7606 pursuant to Subsection (1)(g) as an athlete agent in any state.

7607 (2) An individual who has submitted an application for, and holds a certificate of,  
7608 registration or licensure as an athlete agent in another state, may submit a copy of the  
7609 application and certificate in lieu of submitting an application in the form prescribed pursuant  
7610 to Subsection (1). The division shall accept the application and the certificate from the other  
7611 state as an application for registration in this state if the application to the other state:

7612 (a) was submitted in the other state within six months immediately preceding the  
7613 submission of the application in this state and the applicant certifies that the information  
7614 contained in the application is current;

7615 (b) contains information substantially similar to or more comprehensive than that  
7616 required in an application submitted in this state; and

7617 (c) was signed by the applicant under penalty of perjury.

7618 Section 239. Section **15-9-106** is amended to read:

7619 **15-9-106. Certificate of registration -- Issuance or denial -- Renewal.**

7620 (1) Except as otherwise provided in Subsection (2), the division shall issue a  
7621 certificate of registration to an individual who complies with Subsection 15-9-105(1) or whose  
7622 application has been accepted under Subsection 15-9-105(2).

7623 (2) The division may refuse to issue a certificate of registration if the division  
7624 determines that the applicant has engaged in conduct that has a significant adverse effect on  
7625 the applicant's fitness to act as an athlete agent. In making the determination, the division may  
7626 consider whether the applicant has:

7627 (a) been convicted of a crime that, if committed in this state, would be a crime  
7628 involving moral turpitude or a felony;

7629 (b) made a materially false, misleading, deceptive, or fraudulent representation in the  
7630 application or as an athlete agent;

7631 (c) engaged in conduct that would disqualify the applicant from serving in a fiduciary  
7632 capacity;

7633 (d) engaged in conduct prohibited by Section 15-9-114;

7634 (e) had a registration or licensure as an athlete agent suspended, revoked, or denied or  
7635 been refused renewal of registration or licensure as an athlete agent in any state;

7636 (f) engaged in conduct the consequence of which was that a sanction, suspension, or  
7637 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event  
7638 was imposed on a student-athlete or educational institution; or

7639 (g) engaged in conduct that significantly, adversely reflects on the applicant's  
7640 credibility, honesty, or integrity.

7641 (3) In making a determination under Subsection (2), the division shall consider:

7642 (a) how recently the conduct occurred;

7643 (b) the nature of the conduct and the context in which it occurred; and

7644 (c) any other relevant conduct of the applicant.

7645 (4) An athlete agent may apply to renew a registration by submitting an application for

7646 renewal in a form prescribed by the division. An application filed under this section is a  
7647 public record under Title 63G, Chapter 2, Government Records Access and Management Act.  
7648 The application for renewal [~~must~~] shall be signed by the applicant under penalty of perjury  
7649 and [~~must~~] shall contain current information on all matters required in an original registration.

7650 (5) An individual who has submitted an application for renewal of registration or  
7651 licensure in another state, in lieu of submitting an application for renewal in the form  
7652 prescribed pursuant to Subsection (4), may file a copy of the application for renewal and a  
7653 valid certificate of registration or licensure from the other state. The division shall accept the  
7654 application for renewal from the other state as an application for renewal in this state if the  
7655 application to the other state:

7656 (a) was submitted in the other state within six months immediately preceding the filing  
7657 in this state and the applicant certifies the information contained in the application for renewal  
7658 is current;

7659 (b) contains information substantially similar to or more comprehensive than that  
7660 required in an application for renewal submitted in this state; and

7661 (c) was signed by the applicant under penalty of perjury.

7662 (6) A certificate of registration or a renewal of a registration is valid for two years.

7663 Section 240. Section **15-9-109** is amended to read:

7664 **15-9-109. Registration and renewal fees.**

7665 (1) An application for registration or renewal of registration [~~must~~] shall be  
7666 accompanied by a fee in an amount determined by the division in accordance with Section  
7667 63J-1-504.

7668 (2) The division shall establish fees for:

7669 (a) an initial application for registration;

7670 (b) an application for registration based upon a certificate of registration or licensure  
7671 issued by another state;

7672 (c) an application for renewal of registration; and

7673 (d) an application for renewal of registration based upon an application for renewal of

7674 registration or licensure submitted in another state.

7675 Section 241. Section **15-9-110** is amended to read:

7676 **15-9-110. Required form of contract.**

7677 (1) An agency contract [~~must~~] shall be in a record, signed or otherwise authenticated  
7678 by the parties.

7679 (2) An agency contract [~~must~~] shall state or contain:

7680 (a) the amount and method of calculating the consideration to be paid by the  
7681 student-athlete for services to be provided by the athlete agent under the contract and any other  
7682 consideration the athlete agent has received or will receive from any other source for entering  
7683 into the contract or for providing the services;

7684 (b) the name of any person not listed in the application for registration or renewal of  
7685 registration who will be compensated because the student-athlete signed the agency contract;

7686 (c) a description of any expenses that the student-athlete agrees to reimburse;

7687 (d) a description of the services to be provided to the student-athlete;

7688 (e) the duration of the contract; and

7689 (f) the date of execution.

7690 (3) An agency contract [~~must~~] shall contain, in close proximity to the signature of the  
7691 student-athlete, a conspicuous notice in boldface type in capital letters stating:

7692 **WARNING TO STUDENT-ATHLETE**

7693 **IF YOU SIGN THIS CONTRACT:**

7694 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A**  
7695 **STUDENT-ATHLETE IN YOUR SPORT;**

7696 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER**  
7697 **ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT**  
7698 **[~~MUST~~] SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND**

7699 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING**  
7700 **IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR**  
7701 **ELIGIBILITY.**

7702 (4) An agency contract that does not conform to this section is voidable by the  
7703 student-athlete. If a student-athlete voids an agency contract, the student-athlete is not  
7704 required to pay any consideration under the contract or to return any consideration received  
7705 from the athlete agent to induce the student-athlete to enter into the contract.

7706 (5) The athlete agent shall give a record of the signed or otherwise authenticated  
7707 agency contract to the student-athlete at the time of execution.

7708 Section 242. Section **15-9-118** is amended to read:

7709 **15-9-118. Uniformity of application and construction.**

7710 In applying and construing this uniform act, consideration [~~must~~] shall be given to the  
7711 need to promote uniformity of the law with respect to its subject matter among states that  
7712 enact it.

7713 Section 243. Section **16-6a-709** is amended to read:

7714 **16-6a-709. Action by written ballot.**

7715 (1) Unless otherwise provided by the bylaws, any action that may be taken at any  
7716 annual, regular, or special meeting of members may be taken without a meeting if the  
7717 nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

7718 (2) A written ballot described in Subsection (1) shall:

7719 (a) set forth each proposed action; and

7720 (b) provide an opportunity to vote for or against each proposed action.

7721 (3) (a) Approval by written ballot pursuant to this section shall be valid only when:

7722 (i) the time, as determined under Subsection (8), by which all ballots must be received  
7723 by the nonprofit corporation has passed so that a quorum can be determined; and

7724 (ii) the number of approvals equals or exceeds the number of votes that would be  
7725 required to approve the matter at a meeting at which the total number of votes cast was the  
7726 same as the number of votes cast by ballot.

7727 (b) Unless otherwise provided in this chapter or in accordance with Section  
7728 16-6a-716, for purposes of taking action by written ballot the number of votes cast by written  
7729 ballot pursuant to this section constitute a quorum for action on the matter.

7730 (4) All solicitations for votes by written ballot shall:  
7731 (a) indicate the number of responses needed to meet the quorum requirements;  
7732 (b) state the percentage of approvals necessary to approve each matter other than  
7733 election of directors;  
7734 (c) specify the time by which a ballot must be received by the nonprofit corporation in  
7735 order to be counted; and  
7736 (d) be accompanied by written information sufficient to permit each person casting the  
7737 ballot to reach an informed decision on the matter.  
7738 (5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.  
7739 (6) Action taken under this section has the same effect as action taken at a meeting of  
7740 members and may be described as such in any document.  
7741 (7) Unless otherwise provided by the bylaws, a written ballot delivered to every  
7742 member entitled to vote on the matter or matters therein, as described in this section, may also  
7743 be used in connection with any annual, regular, or special meeting of members, thereby  
7744 allowing members the choice of either voting in person or by written ballot delivered by a  
7745 member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot  
7746 shall comply with the requirements of Subsection (2) and shall be counted equally with the  
7747 votes of members in attendance at any meeting for every purpose, including satisfaction of a  
7748 quorum requirement.  
7749 (8) (a) Members [~~must~~] shall be provided a fair and reasonable amount of time before  
7750 the day on which the nonprofit corporation must receive ballots.  
7751 (b) An amount of time is considered to be fair and reasonable if:  
7752 (i) members are given at least 15 days from the day on which the notice is mailed, if  
7753 the notice is mailed by first-class or registered mail;  
7754 (ii) members are given at least 30 days from the day on which the notice is mailed, if  
7755 the notice is mailed by other than first-class or registered mail; or  
7756 (iii) considering all the circumstances, the amount of time is otherwise reasonable.  
7757 Section 244. Section **16-6a-808** is amended to read:

7758           **16-6a-808. Removal of directors.**

7759           (1) Directors elected by voting members or directors may be removed as provided in  
7760 Subsections (1)(a) through (g).

7761           (a) The voting members may remove one or more directors elected by them with or  
7762 without cause unless the bylaws provide that directors may be removed only for cause.

7763           (b) If a director is elected by a voting group, only that voting group may participate in  
7764 the vote to remove that director.

7765           (c) A director may be removed only if the number of votes cast to remove the director  
7766 would be sufficient to elect the director at a meeting to elect directors.

7767           (d) A director elected by voting members may be removed by the voting members  
7768 only:

7769           (i) at a meeting called for the purpose of removing that director; and

7770           (ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting  
7771 is removal of the director.

7772           (e) An entire board of directors may be removed under Subsections (1)(a) through (d).

7773           (f) (i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of  
7774 directors may be removed with or without cause by the vote of a majority of the directors then  
7775 in office or such greater number as is set forth in the bylaws.

7776           (ii) A director elected by the board of directors to fill the vacancy of a director elected  
7777 by the voting members may be removed without cause by the voting members but not the  
7778 board of directors.

7779           (g) Notwithstanding Subsections (1)(a) through (f), if provided in the bylaws, any  
7780 director no longer qualified to serve, under standards set forth in the bylaws, may be removed  
7781 by a vote of a majority of the directors then in office or such greater number as set forth in the  
7782 bylaws.

7783           (h) A director who is removed pursuant to this section may deliver to the division for  
7784 filing a statement to that effect pursuant to Section 16-6a-1608.

7785           (2) Unless otherwise provided in the bylaws:

7786 (a) an appointed director may be removed without cause by the person appointing the  
7787 director;

7788 (b) the person described in Subsection (2)(a) shall remove the director by giving  
7789 written notice of the removal to:

7790 (i) the director; and

7791 (ii) the nonprofit corporation; and

7792 (c) unless the written notice described in Subsection (2)(b) specifies a future effective  
7793 date, a removal is effective when the notice is received by both:

7794 (i) the director to be removed; and

7795 (ii) the nonprofit corporation.

7796 (3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by  
7797 an amendment to the bylaws deleting or changing the designation.

7798 (4) Removal of a director under this section [~~shall not be~~] is not affected by  
7799 Subsection 16-6a-805(5).

7800 Section 245. Section **16-6a-1419** is amended to read:

7801 **16-6a-1419. Deposit with state treasurer.**

7802 Assets of a dissolved nonprofit corporation that [~~should~~] are to be transferred to a  
7803 creditor, claimant, or member of the nonprofit corporation shall be reduced to cash and  
7804 deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property  
7805 Act, if the creditor, claimant, or member:

7806 (1) cannot be found; or

7807 (2) is not legally competent to receive the assets.

7808 Section 246. Section **16-7-10** is amended to read:

7809 **16-7-10. Death of bishop, trustee, not incorporated -- Succession to property.**

7810 In case of the death, resignation or removal of any such archbishop, bishop, president,  
7811 trustee in trust, president of stake, president of congregation, overseer, presiding elder or  
7812 clergyman who at the time of his death, resignation or removal was holding the title to trust  
7813 property for the use or benefit of any church or religious society, and was not incorporated as a

7814 corporation sole, the title to any and all such property held by him, of every nature and kind,  
7815 [~~shall not~~] does not revert to the grantor nor vest in the heirs of such deceased person, but shall  
7816 be deemed to be in abeyance after such death, resignation or removal until his successor is  
7817 duly appointed to fill such vacancy, and upon the appointment of such successor the title to all  
7818 the property held by his predecessor shall at once, without any other act or deed, vest in the  
7819 person appointed to fill such vacancy.

7820 Section 247. Section **16-10a-103** is amended to read:

7821 **16-10a-103. Notice.**

7822 (1) (a) Notice given under this chapter [~~must~~] shall be in writing unless oral notice is  
7823 reasonable under the circumstances.

7824 (b) Notice by electronic transmission is written notice.

7825 (2) (a) Subject to compliance with any requirement that notice be in writing, notice  
7826 may be communicated in person, by telephone, by any form of electronic transmission, or by  
7827 mail or private carrier.

7828 (b) If the forms of personal notice listed in Subsection (2)(a) are impracticable, notice  
7829 may be communicated:

7830 (i) (A) by a newspaper of general circulation in the county, or similar subdivision, in  
7831 which the corporation's principal office is located; and

7832 (B) by publication in accordance with Section 45-1-101;

7833 (ii) by radio, television, or other form of public broadcast communication in the  
7834 county or subdivision; or

7835 (iii) if the corporation has no office in this state, in the manner allowed by Subsection  
7836 (2)(b)(i) or (ii) but in Salt Lake County.

7837 (3) (a) Written notice by a domestic or foreign corporation to its shareholders or  
7838 directors, if in a comprehensible form, is effective as to each shareholder or director:

7839 (i) when mailed, if addressed to the shareholder's or director's address shown in the  
7840 corporation's current record of the shareholder or director; or

7841 (ii) when electronically transmitted to the shareholder or director, in a manner and to

7842 an address provided by the shareholder or director in an unrevoked consent.

7843 (b) Consent under Subsection (3)(a)(ii) is considered revoked if:

7844 (i) the corporation is unable to deliver by electronic transmission two consecutive

7845 notices transmitted by the corporation based on that consent; and

7846 (ii) the corporation's inability to deliver notice by electronic transmission under

7847 Subsection (3)(b)(i) is known by the:

7848 (A) corporation's secretary;

7849 (B) an assistant secretary or transfer agent of the corporation; or

7850 (C) any other person responsible for providing notice.

7851 (c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under

7852 Subsection (3)(a) as revoked does not invalidate any meeting or other act.

7853 (d) Delivery of a notice to shareholders may be excused in accordance with Subsection

7854 16-10a-705(5).

7855 (4) Written notice to a domestic or foreign corporation authorized to transact business

7856 in this state may be addressed to the corporation's:

7857 (a) registered agent; or

7858 (b) secretary at its principal office.

7859 (5) Except as provided in Subsection (3), written notice, if in a comprehensible form,

7860 is effective at the earliest of the following:

7861 (a) when received;

7862 (b) five days after it is mailed; or

7863 (c) on the date shown on the return receipt if sent by registered or certified mail, return

7864 receipt requested, and the receipt is signed by or on behalf of the addressee.

7865 (6) Oral notice is effective when communicated if communicated in a comprehensible

7866 manner.

7867 (7) Notice by publication is effective on the date of first publication.

7868 (8) (a) If this chapter prescribes notice requirements for particular circumstances,

7869 those requirements govern.

7870 (b) If articles of incorporation or bylaws prescribe notice requirements, not  
7871 inconsistent with this section or other provisions of this chapter, those requirements govern.

7872 Section 248. Section **16-10a-120** is amended to read:

7873 **16-10a-120. Filing requirements.**

7874 (1) A document [~~must~~] shall satisfy the requirements of this section, and of any other  
7875 section of this chapter that adds to or varies these requirements, to be entitled to filing by the  
7876 division.

7877 (2) This chapter must require or permit filing the document with the division.

7878 (3) (a) The document [~~must~~] shall contain the information required by this chapter.

7879 (b) A document may contain information in addition to that required in Subsection

7880 (3)(a).

7881 (4) The document [~~must~~] shall be typewritten or machine printed.

7882 (5) (a) The document [~~must~~] shall be in the English language.

7883 (b) A corporate name need not be in English if written in English letters, Arabic or  
7884 Roman numerals.

7885 (c) The certificate of existence required of foreign corporations need not be in English  
7886 if accompanied by a reasonably authenticated English translation.

7887 (6) The document [~~must~~] shall be executed, or [~~must~~] shall be a true copy made by  
7888 photographic, xerographic, electronic, or other process that provides similar copy accuracy of  
7889 a document that has been executed:

7890 (a) by the chairman of the board of directors of a domestic or foreign corporation, by  
7891 all of its directors, or by one of its officers;

7892 (b) if directors have not been selected or the corporation has not been formed, by an  
7893 incorporator;

7894 (c) if the corporation is in the hands of a receiver, trustee, or other court-appointed  
7895 fiduciary, by that fiduciary;

7896 (d) if the document is that of a registered agent, by the registered agent, if the person is  
7897 an individual, or by a person authorized by the registered agent to execute the document, if the

7898 registered agent is an entity; or

7899 (e) by an attorney in fact if the corporation retains the power of attorney with the  
7900 corporation's records.

7901 (7) The document shall state beneath or opposite the signature of the person executing  
7902 the document the signer's name and the capacity in which the document is signed.

7903 (8) The document may, but need not, contain:

7904 (a) the corporate seal;

7905 (b) an attestation by the secretary or an assistant secretary; or

7906 (c) an acknowledgment, verification, or proof.

7907 (9) The signature of each person signing the document, whether or not the document  
7908 contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes  
7909 the affirmation or acknowledgment of the person, under penalties of perjury, that the  
7910 document is the person's act and deed or the act and deed of the entity on behalf of which the  
7911 document is executed, and that the facts stated in the document are true.

7912 (10) If the division has prescribed a mandatory form or cover sheet for the document  
7913 under Section 16-10a-121, the document [~~must~~] shall be in or on the prescribed form or [~~must~~]  
7914 shall have the required cover sheet.

7915 (11) The document [~~must~~] shall be delivered to the division for filing and [~~must~~] shall  
7916 be accompanied by one exact or conformed copy, except as provided in Section 16-10a-1510,  
7917 the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or  
7918 other law.

7919 (12) Except with respect to a filing pursuant to Section 16-10a-1510, the document  
7920 [~~must~~] shall state, or be accompanied by a writing stating, the address to which the division  
7921 may send a copy upon completion of the filing.

7922 Section 249. Section **16-10a-201** is amended to read:

7923 **16-10a-201. Incorporators.**

7924 One or more persons may act as incorporators of a corporation by delivering to the  
7925 division for filing articles meeting the requirements of Section 16-10a-202. An incorporator

7926 who is a natural person [~~must~~] shall be at least 18 years old.

7927 Section 250. Section **16-10a-202** is amended to read:

7928 **16-10a-202. Articles of incorporation.**

7929 (1) The articles of incorporation shall set forth:

7930 (a) the purpose or purposes for which the corporation is organized;

7931 (b) a corporate name for the corporation that satisfies the requirements of Section  
7932 16-10a-401;

7933 (c) the number of shares the corporation is authorized to issue;

7934 (d) the information required by Section 16-10a-601 with respect to each class of  
7935 shares the corporation is authorized to issue;

7936 (e) the information required by Subsection 16-17-203(1); and

7937 (f) the name and address of each incorporator.

7938 (2) The articles of incorporation may set forth:

7939 (a) the names and addresses of the individuals who are to serve as the initial directors;

7940 (b) provisions not inconsistent with law regarding:

7941 (i) managing the business and regulating the affairs of the corporation;

7942 (ii) defining, limiting, and regulating the powers of the corporation, its board of  
7943 directors, and its shareholders;

7944 (iii) a par value for authorized shares or classes of shares; and

7945 (iv) the imposition of personal liability on shareholders for the debts of the corporation  
7946 to a specified extent and upon specified conditions; and

7947 (c) any provision that under this chapter is permitted to be in the articles of  
7948 incorporation or required or permitted to be set forth in the bylaws including elective  
7949 provisions which, to be effective, [~~must~~] shall be included in the articles of incorporation, as  
7950 provided in this chapter.

7951 (3) It shall be sufficient under Subsection (1)(a) to state, either alone or with other  
7952 purposes, that the purpose of the corporation is to engage in any lawful act or activity for  
7953 which corporations may be organized under the Utah Revised Business Corporation Act, and

7954 by such statement all lawful acts and activities shall be within the purposes of the corporation,  
7955 except for express limitations, if any.

7956 (4) The articles of incorporation need not set forth any of the corporate powers  
7957 enumerated in this chapter.

7958 (5) The articles of incorporation shall be signed by each incorporator and meet the  
7959 filing requirements of Section 16-10a-120.

7960 (6) The appointment of the registered agent shall be signed by the registered agent on  
7961 the articles of incorporation or on an attached acknowledgement.

7962 (7) If this chapter conditions any matter upon the presence of a provision in the  
7963 bylaws, the condition is satisfied if the provision is present either in the articles of  
7964 incorporation or the bylaws. If this chapter conditions any matter upon the absence of a  
7965 provision in the bylaws, the condition is satisfied only if the provision is absent from both the  
7966 articles of incorporation and the bylaws.

7967 Section 251. Section **16-10a-401** is amended to read:

7968 **16-10a-401. Corporate name.**

7969 (1) The name of a corporation:

7970 (a) except for the name of a depository institution as defined in Section 7-1-103,

7971 [~~must~~] shall contain:

7972 (i) the word:

7973 (A) "corporation";

7974 (B) "incorporated"; or

7975 (C) "company";

7976 (ii) the abbreviation:

7977 (A) "corp.";

7978 (B) "inc."; or

7979 (C) "co."; or

7980 (iii) words or abbreviations of like import to the words or abbreviations listed in

7981 Subsections (1)(a)(i) and (ii) in another language;

7982 (b) may not contain language stating or implying that the corporation is organized for  
7983 a purpose other than that permitted by:

- 7984 (i) Section 16-10a-301; and  
7985 (ii) the corporation's articles of incorporation;

7986 (c) without the written consent of the United States Olympic Committee, may not  
7987 contain the words:

- 7988 (i) "Olympic";  
7989 (ii) "Olympiad"; or  
7990 (iii) "Citius Altius Fortius"; and

7991 (d) without the written consent of the Division of Consumer Protection issued in  
7992 accordance with Section 13-34-114, may not contain the words:

- 7993 (i) "university";  
7994 (ii) "college"; or  
7995 (iii) "institute."

7996 (2) Except as authorized by Subsections (3) and (4), the name of a corporation [~~must~~]  
7997 shall be distinguishable, as defined in Subsection (5), upon the records of the division from:

7998 (a) the name of any domestic corporation incorporated in or foreign corporation  
7999 authorized to transact business in this state;

8000 (b) the name of any domestic or foreign nonprofit corporation incorporated or  
8001 authorized to transact business in this state;

8002 (c) the name of any domestic or foreign limited liability company formed or  
8003 authorized to transact business in this state;

8004 (d) the name of any limited partnership formed or authorized to transact business in  
8005 this state;

8006 (e) any name reserved or registered with the division for a corporation, limited liability  
8007 company, or general or limited partnership, under the laws of this state; and

8008 (f) any business name, fictitious name, assumed name, trademark, or service mark  
8009 registered by the division.

8010 (3) (a) A corporation may apply to the division for authorization to file its articles of  
8011 incorporation under, or to register or reserve, a name that is not distinguishable upon its  
8012 records from one or more of the names described in Subsection (2).

8013 (b) The division shall approve the application filed under Subsection (3)(a) if:

8014 (i) the other person whose name is not distinguishable from the name under which the  
8015 applicant desires to file, or which the applicant desires to register or reserve:

8016 (A) consents to the filing, registration, or reservation in writing; and

8017 (B) submits an undertaking in a form satisfactory to the division to change its name to  
8018 a name that is distinguishable from the name of the applicant; or

8019 (ii) the applicant delivers to the division a certified copy of the final judgment of a  
8020 court of competent jurisdiction establishing the applicant's right to make the requested filing  
8021 in this state under the name applied for.

8022 (4) A corporation may make a filing under the name, including the fictitious name, of  
8023 another domestic or foreign corporation that is used or registered in this state if:

8024 (a) the other corporation is incorporated or authorized to transact business in this state;  
8025 and

8026 (b) the filing corporation:

8027 (i) has merged with the other corporation; or

8028 (ii) has been formed by reorganization of the other corporation.

8029 (5) (a) A name is distinguishable from other names, trademarks, and service marks on  
8030 the records of the division if it:

8031 (i) contains one or more different letters or numerals; or

8032 (ii) has a different sequence of letters or numerals from the other names on the  
8033 division's records.

8034 (b) Differences which are not distinguishing are:

8035 (i) the words or abbreviations of the words:

8036 (A) "corporation";

8037 (B) "company";

- 8038 (C) "incorporated";
- 8039 (D) "limited partnership";
- 8040 (E) "L.P.";
- 8041 (F) "limited";
- 8042 (G) "Ltd.";
- 8043 (H) "limited liability company";
- 8044 (I) "limited company";
- 8045 (J) "L.C."; or
- 8046 (K) "L.L.C.";
- 8047 (ii) the presence or absence of the words or symbols of the words "the," "and," or "a";
- 8048 (iii) differences in punctuation and special characters;
- 8049 (iv) differences in capitalization;
- 8050 (v) differences between singular and plural forms of words for a corporation:
- 8051 (A) incorporated in or authorized to do business in this state on or after May 4, 1998;
- 8052 or
- 8053 (B) that changes its name on or after May 4, 1998;
- 8054 (vi) differences in whether the letters or numbers immediately follow each other or are
- 8055 separated by one or more spaces if:
- 8056 (A) the sequence of letters or numbers is identical; and
- 8057 (B) the corporation:
- 8058 (I) is incorporated in or authorized to do business in this state on or after May 3, 1999;
- 8059 or
- 8060 (II) changes its name on or after May 3, 1999; or
- 8061 (vii) differences in abbreviations, for a corporation:
- 8062 (A) incorporated in or authorized to do business in this state on or after May 1, 2000;
- 8063 or
- 8064 (B) that changes its name on or after May 1, 2000.
- 8065 (c) The director of the division has the power and authority reasonably necessary to

8066 interpret and efficiently administer this section and to perform the duties imposed on the  
8067 division by this section.

8068 (6) A name that implies that the corporation is an agency of this state or of any of its  
8069 political subdivisions, if it is not actually such a legally established agency or subdivision, may  
8070 not be approved for filing by the division.

8071 (7) (a) The requirements of Subsection (1)(d) do not apply to a corporation  
8072 incorporated in or authorized to do business in this state on or before May 4, 1998, until  
8073 December 31, 1998.

8074 (b) On or after January 1, 1999, any corporation incorporated in or authorized to do  
8075 business in this state shall comply with the requirements of Subsection (1)(d).

8076 Section 252. Section **16-10a-601** is amended to read:

8077 **16-10a-601. Authorized shares.**

8078 (1) The articles of incorporation [~~must~~] shall prescribe the classes of shares and the  
8079 number of shares of each class that the corporation is authorized to issue. If more than one  
8080 class of shares is authorized, the articles of incorporation [~~must~~] shall prescribe a  
8081 distinguishing designation for each class, and prior to the issuance of shares of a class the  
8082 preferences, limitations, and relative rights of that class [~~must~~] shall be described in the  
8083 articles of incorporation. All shares of a class [~~must~~] shall have preferences, limitations, and  
8084 relative rights identical with those of other shares of the same class except to the extent  
8085 otherwise permitted by this section and Section 16-10a-602.

8086 (2) The articles of incorporation [~~must~~] shall authorize:

8087 (a) one or more classes of shares that together have unlimited voting rights; and

8088 (b) one or more classes of shares, which may be the same class or classes as those with  
8089 voting rights, that together are entitled to receive the net assets of the corporation upon  
8090 dissolution.

8091 (3) The articles of incorporation may authorize one or more classes of shares and one  
8092 or more series of shares within any class that:

8093 (a) have special, conditional, or limited voting rights, or no right to vote, except to the

8094 extent prohibited by this chapter;

8095 (b) are redeemable or convertible as specified in the articles of incorporation:

8096 (i) at the option of the corporation, the shareholder, or another person or upon the  
8097 occurrence of a designated event;

8098 (ii) for money, indebtedness, securities, or other property; or

8099 (iii) in a designated amount or in an amount determined in accordance with a  
8100 designated formula or by reference to extrinsic data or events;

8101 (c) entitle the holders to distributions calculated in any manner, including dividends  
8102 that may be cumulative, noncumulative, or partially cumulative; or

8103 (d) have preference over any other class or series of shares with respect to  
8104 distributions, including dividends and distributions upon the dissolution of the corporation.

8105 (4) The description of the designations, preferences, limitations, and relative rights of  
8106 share classes or series of shares in Subsection (3) is not exhaustive.

8107 Section 253. Section **16-10a-602** is amended to read:

8108 **16-10a-602. Terms of class or series determined by board of directors.**

8109 (1) If the articles of incorporation so provide, the board of directors, without  
8110 shareholder action but subject to any limitations and restrictions stated in the articles of  
8111 incorporation, may amend the corporation's articles of incorporation pursuant to the authority  
8112 granted to the board of directors by Subsection 16-10a-1002(1)(e) to do any of the following:

8113 (a) designate in whole or in part, the preferences, limitations, and relative rights,  
8114 within the limits set forth in Section 16-10a-601, of any class of shares before the issuance of  
8115 any shares of that class;

8116 (b) create one or more series within a class of shares, fix the number of shares of each  
8117 such series, and designate, in whole or part, the preferences, limitations, and relative rights of  
8118 the series, within the limits set forth in Section 16-10a-601, all before the issuance of any  
8119 shares of that series;

8120 (c) alter or revoke the preferences, limitations, and relative rights granted to or  
8121 imposed upon any wholly unissued class of shares or any wholly unissued series of any class

8122 of shares; or

8123 (d) increase or decrease the number of shares constituting any series, the number of  
8124 shares of which was originally fixed by the board of directors, either before or after the  
8125 issuance of shares of the series, provided that the number may not be decreased below the  
8126 number of shares of the series then outstanding, or increased above the total number of  
8127 authorized shares of the applicable class of shares available for designation as a part of the  
8128 series.

8129 (2) Each series of a class [~~must~~] shall be given a distinguishing designation.

8130 (3) All shares of a series [~~must~~] shall have preferences, limitations, and relative rights  
8131 identical with those of other shares of the same series and, except to the extent otherwise  
8132 provided in the description of the series, with those of other series of the same class.

8133 (4) Before issuing any shares of a class or series created under this section, or having  
8134 preferences, limitations, or relative rights designated by the board of directors as provided in  
8135 this section, and before any amendment to articles of incorporation contemplated by  
8136 Subsection (1) shall be effective, the corporation [~~must~~] shall deliver to the division for filing,  
8137 in accordance with the procedure set forth in Section 16-10a-1006, articles of amendment that  
8138 set forth:

8139 (a) the name of the corporation;

8140 (b) the text of the amendment adopted by the board of directors pursuant to Subsection  
8141 (1);

8142 (c) the date the amendment was adopted by the board of directors;

8143 (d) a statement that the amendment was duly adopted by the board of directors without  
8144 shareholder action and that shareholder action was not required; and

8145 (e) if the amendment alters or revokes the preferences, limitations, or relative rights  
8146 granted to or imposed upon any wholly unissued class of shares or any wholly unissued series  
8147 of any class of shares, a statement that none of the shares of any class or series of shares so  
8148 affected has been issued.

8149 Section 254. Section **16-10a-603** is amended to read:

8150           **16-10a-603. Issued and outstanding shares.**

8151           (1) A corporation may issue the number of shares of each class or series authorized by  
8152 the articles of incorporation. Shares that are issued are outstanding shares until they are  
8153 reacquired, redeemed, converted, or cancelled.

8154           (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the  
8155 limitations of Subsection (3) and to Section 16-10a-640.

8156           (3) At all times that shares of the corporation are outstanding, one or more shares that  
8157 together have unlimited voting rights and one or more shares that together are entitled to  
8158 receive the net assets of the corporation upon dissolution [~~must~~] shall be outstanding.

8159           Section 255. Section **16-10a-604** is amended to read:

8160           **16-10a-604. Fractional shares.**

8161           (1) A corporation may:

8162           (a) issue fractions of a share or pay in money the value of fractions of a share;

8163           (b) arrange for disposition of fractional shares by the shareholders; or

8164           (c) issue scrip in registered or bearer form entitling the holder to receive a full share  
8165 upon surrendering enough scrip to equal a full share.

8166           (2) Each certificate representing scrip [~~must~~] shall be conspicuously labeled "scrip"  
8167 and [~~must~~] shall contain the information required to be included on a share certificate by  
8168 Subsections 16-10a-625(2) and (3) and Section 16-10a-627.

8169           (3) The holder of a fractional share is entitled to exercise the rights of a shareholder,  
8170 including the right to vote, to receive dividends, and to participate in the assets of the  
8171 corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless  
8172 the scrip provides for them.

8173           (4) The board of directors may authorize the issuance of scrip subject to any condition  
8174 considered desirable, including:

8175           (a) that the scrip will become void if not exchanged for full shares before a specified  
8176 date; and

8177           (b) that the shares for which the scrip is exchangeable may be sold and the proceeds

8178 paid to the scripholders.

8179 Section 256. Section **16-10a-620** is amended to read:

8180 **16-10a-620. Subscriptions for shares.**

8181 (1) A subscription for shares entered into before incorporation is irrevocable for six  
8182 months unless the subscription agreement provides a longer or shorter period or all the  
8183 subscribers agree or the corporation consents to revocation of the subscription and provided  
8184 the subscription is not considered revocable under the federal securities laws.

8185 (2) The acceptance by the corporation of a subscription entered into before  
8186 incorporation and the authorization of the issuance of shares pursuant thereto are subject to  
8187 Section 16-10a-621.

8188 (3) The board of directors may determine the payment terms of subscriptions for  
8189 shares that were entered into before incorporation, unless the subscription agreement specifies  
8190 them. A call for payment by the board of directors [~~must~~] shall be uniform so far as  
8191 practicable as to all shares of the same class or series, unless the subscription agreement  
8192 specifies otherwise.

8193 (4) Shares issued pursuant to subscriptions entered into before incorporation are fully  
8194 paid and nonassessable when the corporation receives the consideration specified in the  
8195 subscription agreement.

8196 (5) If a subscriber defaults in payment of money or property under a subscription  
8197 agreement entered into before incorporation, the corporation may collect the amount owed as  
8198 any other debt. Alternatively, unless the subscription agreement provides otherwise, the  
8199 corporation may rescind the agreement and may sell the shares if the debt remains unpaid  
8200 more than 20 days after the corporation sends written demand for payment to the subscriber.

8201 (6) A subscription agreement entered into after incorporation is a contract between the  
8202 subscriber and the corporation subject to Section 16-10a-621.

8203 Section 257. Section **16-10a-621** is amended to read:

8204 **16-10a-621. Issuance of shares.**

8205 (1) The powers granted in this section to the board of directors may be reserved to the

8206 shareholders by the articles of incorporation.

8207 (2) The board of directors may authorize the issuance of shares for consideration  
8208 consisting of any tangible or intangible property or benefit to the corporation, including cash,  
8209 promissory notes, services performed, contracts or arrangements for services to be performed,  
8210 or other securities of the corporation. The terms and conditions of any tangible or intangible  
8211 property or benefit to be provided in the future to the corporation, including contracts or  
8212 arrangements for services to be performed, shall be set forth in writing. However, the failure  
8213 to set forth the terms and conditions in writing does not affect the validity of the issuance of  
8214 any shares issued for any consideration, or their status as fully paid and nonassessable shares.

8215 (3) Before the corporation issues shares, the board of directors [~~must~~] shall determine  
8216 that the consideration received or to be received for the shares to be issued is adequate. The  
8217 board of directors' determination regarding the adequacy of consideration for the issuance of  
8218 shares is conclusive for the purpose of determining whether the shares are validly issued, fully  
8219 paid, and nonassessable.

8220 (4) When the corporation receives the consideration for which the board of directors  
8221 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

8222 (5) The corporation may place in escrow shares issued in consideration for contracts or  
8223 arrangements for future services or benefits or in consideration for a promissory note, or make  
8224 other arrangements to restrict the transfer of the shares issued for any such consideration, and  
8225 may credit distributions in respect of the shares against their purchase price, until the services  
8226 are performed, the note is paid, or the benefits are received. If specified future services are not  
8227 performed, the note is not paid, or the benefits are not received, the shares escrowed or  
8228 restricted and the distributions credited may be cancelled in whole or part.

8229 (6) The board of directors may authorize a committee of the board of directors, or an  
8230 officer of the corporation, to authorize or approve the issuance or sale, or contract for sale of  
8231 shares, within limits specifically prescribed by the board of directors.

8232 Section 258. Section **16-10a-625** is amended to read:

8233 **16-10a-625. Form and content of certificates.**

8234 (1) Shares may but need not be represented by certificates. Unless this chapter or  
8235 another applicable statute expressly provides otherwise, the rights and obligations of  
8236 shareholders are not affected by whether or not their shares are represented by certificates.

8237 (2) Each share certificate [~~must~~] shall state on its face:

8238 (a) the name of the issuing corporation and that it is organized under the laws of this  
8239 state;

8240 (b) the name of the person to whom the certificate is issued; and

8241 (c) the number and class of shares and the designation of the series, if any, the  
8242 certificate represents.

8243 (3) If the issuing corporation is authorized to issue different classes of shares or  
8244 different series within a class, the designations, preferences, limitations, and relative rights  
8245 applicable to each class, the variations in preferences, limitations, and relative rights  
8246 determined for each series, and the authority of the board of directors to determine variations  
8247 for any existing or future class or series, [~~must~~] shall be summarized on the front or back of  
8248 each share certificate. Alternatively, each certificate may state conspicuously on its front or  
8249 back that the corporation will furnish the shareholder this information on request in writing  
8250 and without charge.

8251 (4) Each share certificate:

8252 (a) [~~must~~] shall be signed by two officers designated in the bylaws or by the board of  
8253 directors;

8254 (b) may bear the corporate seal or its facsimile; and

8255 (c) may contain any other information as the corporation considers necessary or  
8256 appropriate.

8257 (5) The signatures of the officers upon a certificate may be facsimiles if the certificate  
8258 is countersigned by a transfer agent, or registered by a registrar, other than the corporation  
8259 itself or an employee of the corporation.

8260 (6) In case any officer who has signed or whose facsimile signature has been placed  
8261 upon a certificate ceases to be an officer before the certificate is issued, the certificate may be

8262 issued by the corporation with the same effect as if the person were an officer at the date of its  
8263 issue.

8264 Section 259. Section **16-10a-704** is amended to read:

8265 **16-10a-704. Action without meeting.**

8266 (1) Unless otherwise provided in the articles of incorporation and Subsection (5), and  
8267 subject to the limitations of Subsection 16-10a-1704(4), any action which may be taken at any  
8268 annual or special meeting of shareholders may be taken without a meeting and without prior  
8269 notice, if one or more consents in writing, setting forth the action so taken, shall be signed by  
8270 the holders of outstanding shares having not less than the minimum number of votes that  
8271 would be necessary to authorize or take the action at a meeting at which all shares entitled to  
8272 vote thereon were present and voted.

8273 (2) (a) Unless the written consents of all shareholders entitled to vote have been  
8274 obtained, notice of any shareholder approval without a meeting shall be given at least 10 days  
8275 before the consummation of the transaction, action, or event authorized by the shareholder  
8276 action to:

8277 (i) those shareholders entitled to vote who have not consented in writing; and  
8278 (ii) those shareholders not entitled to vote and to whom this chapter requires that  
8279 notice of the proposed action be given.

8280 (b) The notice [~~must~~] shall contain or be accompanied by the same material that,  
8281 under this chapter, would have been required to be sent in a notice of meeting at which the  
8282 proposed action would have been submitted to the shareholders for action.

8283 (3) Any shareholder giving a written consent, or the shareholder's proxyholder, or a  
8284 transferee of the shares or a personal representative of the shareholder or their respective  
8285 proxyholder, may revoke the consent by a signed writing describing the action and stating that  
8286 the shareholder's prior consent is revoked, if the writing is received by the corporation prior to  
8287 the effectiveness of the action.

8288 (4) A shareholder action taken pursuant to this section is not effective unless all  
8289 written consents on which the corporation relies for the taking of an action pursuant to

8290 Subsection (1) are received by the corporation within a 60-day period and not revoked  
8291 pursuant to Subsection (3). Action taken by the shareholders pursuant to this section is  
8292 effective as of the date the last written consent necessary to effect the action is received by the  
8293 corporation, unless all of the written consents necessary to effect the action specify a later date  
8294 as the effective date of the action, in which case the later date shall be the effective date of the  
8295 action. If the corporation has received written consents as contemplated by Subsection (1)  
8296 signed by all shareholders entitled to vote with respect to the action, the effective date of the  
8297 shareholder action may be any date that is specified in all the written consents as the effective  
8298 date of the shareholder action. Unless otherwise provided by the bylaws, the writing may be  
8299 received by the corporation by electronically transmitted facsimile or other form of  
8300 communication providing the corporation with a complete copy thereof, including a copy of  
8301 the signature thereto.

8302 (5) Notwithstanding Subsection (1), directors may not be elected by written consent  
8303 except by unanimous written consent of all shares entitled to vote for the election of directors.

8304 (6) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record  
8305 date for determining shareholders entitled to take action without a meeting or entitled to be  
8306 given notice under Subsection (2) of action so taken is the date the first shareholder delivers to  
8307 the corporation a writing upon which the action is taken pursuant to Subsection (1).

8308 (7) Action taken under this section has the same effect as action taken at a meeting of  
8309 shareholders and may be so described in any document.

8310 Section 260. Section **16-10a-705** is amended to read:

8311 **16-10a-705. Notice of meeting.**

8312 (1) A corporation shall give notice to shareholders of the date, time, and place of each  
8313 annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the  
8314 meeting date. Unless this chapter or the articles of incorporation require otherwise, the  
8315 corporation is required to give notice only to shareholders entitled to vote at the meeting.

8316 (2) Unless this chapter or the articles of incorporation require otherwise, notice of an  
8317 annual meeting need not include a description of the purpose or purposes for which the

8318 meeting is called.

8319 (3) Notice of a special meeting [~~must~~] shall include a description of the purpose or  
8320 purposes for which the meeting is called.

8321 (4) (a) Subject to Subsection (b), unless the bylaws require otherwise, if an annual or  
8322 special shareholders' meeting is adjourned to a different date, time, or place, notice need not be  
8323 given of the new date, time, or place if the new date, time, or place is announced at the  
8324 meeting before adjournment.

8325 (b) If the adjournment is for more than 30 days, or if after the adjournment a new  
8326 record date for the adjourned meeting is or [~~must~~] shall be fixed under Section 16-10a-707,  
8327 notice of the adjourned meeting [~~must~~] shall be given pursuant to the requirements of this  
8328 section to shareholders of record who are entitled to vote at the meeting.

8329 (5) (a) Notwithstanding a requirement that notice be given under any provision of this  
8330 chapter, the articles of incorporation, or bylaws of any corporation, notice [~~shall not be~~] is not  
8331 required to be given to any shareholder to whom:

8332 (i) a notice of two consecutive annual meetings, and all notices of meetings or of the  
8333 taking of action by written consent without a meeting during the period between the two  
8334 consecutive annual meetings, have been mailed, addressed to the shareholder at the  
8335 shareholder's address as shown on the records of the corporation, and have been returned  
8336 undeliverable; or

8337 (ii) at least two payments, if sent by first class mail, of dividends or interest on  
8338 securities during a 12 month period, have been mailed, addressed to the shareholder at the  
8339 shareholder's address as shown on the records of the corporation, and have been returned  
8340 undeliverable.

8341 (b) Any action taken or meeting held without notice to a shareholder to whom notice is  
8342 excused under Subsection (5) has the same force and effect as if notice had been duly given.  
8343 If a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a  
8344 written notice setting forth the shareholder's current address, or if another address for the  
8345 shareholder is otherwise made known to the corporation, the requirement that notice be given

8346 to the shareholder is reinstated. In the event that the action taken by the corporation requires  
8347 the filing of a certificate under any provision of this chapter, the certificate need not state that  
8348 notice was not given to shareholders to whom notice was not required pursuant to this  
8349 subsection.

8350 Section 261. Section **16-10a-706** is amended to read:

8351 **16-10a-706. Waiver of notice.**

8352 (1) A shareholder may waive any notice required by this chapter, the articles of  
8353 incorporation, or the bylaws before or after the date and time stated in the notice as the date or  
8354 time when any action will occur or has occurred. The waiver [~~must~~] shall be in writing, be  
8355 signed by the shareholder entitled to the notice, and be delivered to the corporation for  
8356 inclusion in the minutes or filing with the corporate records.

8357 (2) A shareholder's attendance at a meeting:

8358 (a) waives objection to lack of notice or defective notice of the meeting, unless the  
8359 shareholder at the beginning of the meeting objects to holding the meeting or transacting  
8360 business at the meeting because of lack of notice or defective notice; and

8361 (b) waives objection to consideration of a particular matter at the meeting that is not  
8362 within the purposes described in the meeting notice, unless the shareholder objects to  
8363 considering the matter when it is presented.

8364 Section 262. Section **16-10a-707** is amended to read:

8365 **16-10a-707. Record date.**

8366 (1) The bylaws may fix or provide the manner of fixing the record date for one or more  
8367 voting groups in order to determine the shareholders entitled to be given notice of a  
8368 shareholders' meeting, to determine shareholders entitled to take action without a meeting, to  
8369 demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or  
8370 provide for the manner of fixing a record date, the board of directors of the corporation may  
8371 fix a future date as the record date.

8372 (2) If not otherwise fixed under Section 16-10a-703 or Subsection (1), the record date  
8373 for determining shareholders entitled to notice of and to vote at an annual or special

8374 shareholders' meeting is the close of business on the day before the first notice is delivered to  
8375 shareholders.

8376 (3) A record date fixed under this section may not be more than 70 days before the  
8377 meeting or action requiring a determination of shareholders.

8378 (4) A determination of shareholders entitled to notice of or to vote at a shareholders'  
8379 meeting is effective for any adjournment of the meeting unless the board of directors fixes a  
8380 new record date, which it [~~must~~] shall do if the meeting is adjourned to a date more than 120  
8381 days after the date fixed for the original meeting.

8382 (5) If a court orders a meeting adjourned to a date more than 120 days after the date  
8383 fixed for the original meeting, it may provide that the original record date continues in effect  
8384 or it may fix a new record date.

8385 Section 263. Section **16-10a-720** is amended to read:

8386 **16-10a-720. Shareholders' list for meeting.**

8387 (1) After fixing a record date for a shareholders' meeting, a corporation shall prepare a  
8388 list of the names of all its shareholders who are entitled to be given notice of the meeting. The  
8389 list [~~must~~] shall be arranged by voting group, and within each voting group by class or series  
8390 of shares. The list [~~must~~] shall be alphabetical within each class or series and [~~must~~] shall  
8391 show the address of, and the number of shares held by, each shareholder.

8392 (2) The shareholders' list [~~must~~] shall be available for inspection by any shareholder,  
8393 beginning on the earlier of 10 days before the meeting for which the list was prepared or two  
8394 business days after notice of the meeting is given and continuing through the meeting and any  
8395 meeting adjournments, at the corporation's principal office or at a place identified in the  
8396 meeting notice in the city where the meeting will be held. A shareholder or a shareholder's  
8397 agent or attorney is entitled on written demand to the corporation and, subject to the  
8398 requirements of Subsections 16-10a-1602(3) and (7), and the provisions of Subsections  
8399 16-10a-1603(2) and (3), to inspect and copy the list, during regular business hours and during  
8400 the period it is available for inspection.

8401 (3) The corporation shall make the shareholders' list available at the meeting, and any

8402 shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time  
8403 during the meeting or any adjournment, for any purposes germane to the meeting.

8404 (4) If the corporation refuses to allow a shareholder, or the shareholder's agent or  
8405 attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as  
8406 permitted by Subsection (2), the district court of the county where a corporation's principal  
8407 office is located, or, if it has none in this state, the district court for Salt Lake County, on  
8408 application of the shareholder, may summarily order the inspection or copying at the  
8409 corporation's expense and may postpone the meeting for which the list was prepared until the  
8410 inspection or copying is complete.

8411 (5) If a court orders inspection or copying of the shareholders' list pursuant to  
8412 Subsection (4), unless the corporation proves that it refused inspection or copying of the list in  
8413 good faith because it had a reasonable basis for doubt about the right of the shareholder or the  
8414 shareholder's agent or attorney to inspect or copy the shareholders' list:

8415 (a) the court shall also order the corporation to pay the shareholder's costs, including  
8416 reasonable counsel fees, incurred to obtain the order;

8417 (b) the court may order the corporation to pay the shareholder for any damages  
8418 incurred; and

8419 (c) the court may grant the shareholder any other remedy afforded by law.

8420 (6) If a court orders inspection or copying of the shareholders' list pursuant to  
8421 Subsection (4), the court may impose reasonable restrictions on the use or distribution of the  
8422 list by the shareholder.

8423 (7) Refusal or failure to prepare or make available the shareholders' list does not affect  
8424 the validity of action taken at the meeting.

8425 Section 264. Section **16-10a-722** is amended to read:

8426 **16-10a-722. Proxies.**

8427 (1) A shareholder may vote his shares in person or by proxy.

8428 (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or  
8429 otherwise act for the shareholder by signing an appointment form or by an electronic

8430 transmission. An electronic transmission [~~must~~] shall contain or be accompanied by  
8431 information that indicates that the shareholder, the shareholder's agent, or the shareholder's  
8432 attorney-in-fact authorized the transmission.

8433 (3) An appointment of a proxy is effective when a signed appointment form or an  
8434 electronic transmission of the appointment is received by the inspector of election or the  
8435 officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11  
8436 months unless a longer period is expressly provided in the appointment form.

8437 (4) An appointment of a proxy is revocable unless the appointment form or electronic  
8438 transmission states that it is irrevocable and the appointment is coupled with an interest.  
8439 Appointments coupled with an interest include the appointment of any of the following  
8440 persons or their designees:

8441 (a) a pledgee;

8442 (b) a person who purchased or agreed to purchase the shares;

8443 (c) a creditor of the corporation who extended its credit under terms requiring the  
8444 appointment;

8445 (d) an employee of the corporation whose employment contract requires the  
8446 appointment; or

8447 (e) a party to a voting agreement created under Section 16-10a-731.

8448 (5) The death or incapacity of the shareholder appointing a proxy does not affect the  
8449 right of the corporation to accept the proxy's authority unless the appointment is not  
8450 irrevocable and coupled with an interest, and notice of the death or incapacity is received by  
8451 the secretary or other officer or agent authorized to tabulate votes before the proxy exercises  
8452 the authority under the appointment.

8453 (6) An appointment made irrevocable under Subsection (4) is revoked when the  
8454 interest with which it is coupled is extinguished but the revocation does not affect the right of  
8455 the corporation to accept the proxy's authority unless:

8456 (a) the corporation had notice that the appointment was coupled with that interest and  
8457 notice that the interest is extinguished is received by the secretary or other officer or agent

8458 authorized to tabulate votes before the proxy exercises the authority under the appointment; or

8459 (b) other notice of the revocation of the appointment is received by the secretary or  
8460 other officer or agent authorized to tabulate votes before the proxy exercises the authority  
8461 under the appointment.

8462 (7) The corporation is not required to recognize an appointment made irrevocable  
8463 under Subsection (4) if it has received a writing revoking the appointment signed by the  
8464 shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the  
8465 revocation may be a breach of an obligation of the shareholder to another person not to revoke  
8466 the appointment. This provision [~~shall not~~] does not affect any claim the other person may  
8467 have against the shareholder with respect to the revocation.

8468 (8) A transferee for value of shares subject to an irrevocable appointment may revoke  
8469 the appointment if the transferee did not know of its existence when acquiring the shares and  
8470 the existence of the irrevocable appointment was not noted conspicuously on the certificate  
8471 representing the shares or on the information statement for shares without certificates.

8472 (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's  
8473 authority stated in the appointment form or electronic transmission, a corporation is entitled to  
8474 accept the proxy's vote or other action as that of the shareholder making the appointment.

8475 Section 265. Section **16-10a-723** is amended to read:

8476 **16-10a-723. Shares held by nominees.**

8477 (1) A corporation may establish a procedure by which the beneficial owner of shares  
8478 that are registered in the name of a nominee is recognized by the corporation as the  
8479 shareholder. The extent of this recognition may be determined in the procedure.

8480 (2) The procedure described in Subsection (1) may set forth:

8481 (a) the types of nominees to which it applies;

8482 (b) the rights or privileges that the corporation recognizes in a beneficial owner, which  
8483 may include rights or privileges other than voting;

8484 (c) the manner in which the procedure may be used by the nominee;

8485 (d) the information that [~~must~~] shall be provided by the nominee when the procedure

8486 is used;

8487 (e) the period for which the nominee's use of the procedure is effective; and

8488 (f) other aspects of the rights and duties created.

8489 Section 266. Section **16-10a-725** is amended to read:

8490 **16-10a-725. Quorum and voting requirements for voting groups.**

8491 (1) Shares entitled to vote as a separate voting group may take action on a matter at a  
8492 meeting only if a quorum of those shares exists with respect to that matter. Unless the articles  
8493 of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on  
8494 the matter by the voting group constitutes a quorum of that voting group for action on that  
8495 matter.

8496 (2) Once a share is represented for any purpose at a meeting, including the purpose of  
8497 determining that a quorum exists, it is deemed present for quorum purposes for the remainder  
8498 of the meeting and for any adjournment of that meeting, unless a new record date is or [~~must~~]  
8499 shall be set for that adjourned meeting.

8500 (3) If a quorum exists, action on a matter, other than the election of directors, by a  
8501 voting group is approved if the votes cast within the voting group favoring the action exceed  
8502 the votes cast within the voting group opposing the action, unless the articles of incorporation  
8503 or this chapter requires a greater number of affirmative votes.

8504 (4) The election of directors is governed by Section 16-10a-728.

8505 Section 267. Section **16-10a-727** is amended to read:

8506 **16-10a-727. Greater quorum or voting requirements.**

8507 (1) The articles of incorporation may provide for a greater quorum or voting  
8508 requirement for shareholders, or voting groups of shareholders, than is provided for by this  
8509 chapter.

8510 (2) An amendment to the articles of incorporation that changes or deletes a greater  
8511 quorum or voting requirement [~~must~~] shall meet the same quorum requirement and be adopted  
8512 by the same vote and voting groups required to take action under the quorum and voting  
8513 requirements then in effect.

8514 Section 268. Section **16-10a-730** is amended to read:

8515 **16-10a-730. Voting trusts.**

8516 (1) One or more shareholders may create a voting trust, conferring on a trustee the  
8517 right to vote or otherwise act for them, by signing an agreement setting out the provisions of  
8518 the trust, and transferring to the trustee the shares with respect to which the trustee is to act.  
8519 When a voting trust agreement is signed, the trustee shall prepare a list of the names and  
8520 addresses of all owners of beneficial interests in the trust, together with the number and class  
8521 of shares each transferred to the trust, and promptly cause the corporation to receive copies of  
8522 the list and agreement. Thereafter the trustee shall cause the corporation to receive changes to  
8523 the list promptly as they occur and amendments to the agreement promptly as they are made.

8524 (2) A voting trust becomes effective on the date the first shares subject to the trust are  
8525 registered in the trustee's name. A voting trust is valid for the period provided in the  
8526 agreement, but not more than 10 years after its effective date unless extended under  
8527 Subsection (3).

8528 (3) All or some of the parties to a voting trust may extend the voting trust for  
8529 additional terms of not more than 10 years each by signing an extension agreement and  
8530 obtaining the trustee's written consent to the extension. An extension is valid for not more  
8531 than 10 years from the date the first shareholder signs the extension agreement. The trustee  
8532 [~~must~~] shall deliver copies of the extension agreement and list of beneficial owners to the  
8533 corporation's principal office. An extension agreement binds only those parties signing it.

8534 Section 269. Section **16-10a-732** is amended to read:

8535 **16-10a-732. Shareholder agreements.**

8536 (1) An agreement among the shareholders of a corporation that complies with this  
8537 section is effective among the shareholders and the corporation even though it is inconsistent  
8538 with one or more other provisions of this chapter in that it:

8539 (a) eliminates the board of directors or restricts the discretion or powers of the board  
8540 of directors;

8541 (b) governs the authorization or making of distributions whether or not in proportion

8542 to ownership of shares, subject to the limitations in Section 16-10a-640;

8543 (c) establishes who shall be directors or officers of the corporation, or their terms of  
8544 office or manner of selection or removal;

8545 (d) governs, in general or in regard to specific matters, the exercise or division of  
8546 voting power by or between the shareholders and directors or by or among any of them,  
8547 including use of weighted voting rights or director proxies;

8548 (e) establishes the terms and conditions of any agreement for the transfer or use of  
8549 property or the provision of services between the corporation and any shareholder, director,  
8550 officer or employee of the corporation or among any of them;

8551 (f) transfers to one or more shareholders or other persons all or part of the authority to  
8552 exercise the corporate powers or to manage the business and affairs of the corporation,  
8553 including the resolution of any issue about which there exists a deadlock among directors or  
8554 shareholders;

8555 (g) requires dissolution of the corporation at the request of one or more of the  
8556 shareholders or upon the occurrence of a specified event or contingency; or

8557 (h) otherwise governs the exercise of the corporate powers or the management of the  
8558 business and affairs of the corporation or the relationship among the shareholders, the  
8559 directors and the corporation, or among any of them, and is not contrary to public policy.

8560 (2) An agreement authorized by this section shall be:

8561 (a) set forth:

8562 (i) in the articles of incorporation or bylaws and approved by all persons who are  
8563 shareholders at the time of the agreement; or

8564 (ii) in a written agreement that is signed by all persons who are shareholders at the  
8565 time of the agreement and is made known to the corporation;

8566 (b) subject to amendment only by all persons who are shareholders at the time of the  
8567 amendment, unless the agreement provides otherwise; and

8568 (c) valid for 10 years, unless the agreement provides otherwise.

8569 (3) The existence of an agreement authorized by this section shall be noted

8570 conspicuously on the front or back of each certificate for outstanding shares or on the  
8571 information statement required by Section 16-10a-626(2). If at the time of the agreement the  
8572 corporation has shares outstanding represented by certificates, the corporation shall recall the  
8573 outstanding certificates and issue substitute certificates that comply with this subsection. The  
8574 failure to note the existence of the agreement on the certificate or information statement does  
8575 not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of  
8576 shares who, at the time of purchase, did not have knowledge of the existence of the agreement  
8577 is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the  
8578 existence of the agreement if its existence is noted on the certificate or information statement  
8579 for the shares in compliance with this subsection and, if the shares are not represented by a  
8580 certificate, the information statement is delivered to the purchaser at or prior to the time of  
8581 purchase of the shares. An action to enforce the right of rescission authorized by this  
8582 subsection [~~must~~] shall be commenced within the earlier of 90 days after discovery of the  
8583 existence of the agreement or two years after the time of purchase of the shares.

8584 (4) An agreement authorized by this section shall cease to be effective when shares of  
8585 the corporation are listed on a national securities exchange or regularly traded in a market  
8586 maintained by one or more members of a national or affiliated securities association. If the  
8587 agreement ceases to be effective for any reason, the board of directors may, if the agreement is  
8588 contained or referred to in the corporation's articles of incorporation or bylaws, adopt an  
8589 amendment to the articles of incorporation or bylaws, without shareholder action, to delete the  
8590 agreement and any references to it.

8591 (5) An agreement authorized by this section that limits the discretion or powers of the  
8592 board of directors shall relieve the directors of, and impose upon the person or persons in  
8593 whom the discretion or powers are vested, liability for acts or omissions imposed by laws on  
8594 directors to the extent that the discretion or powers of the directors are limited by the  
8595 agreement.

8596 (6) The existence or performance of an agreement authorized by this section may not  
8597 be a ground for imposing personal liability on any shareholder for the acts or debts of the

8598 corporation even if the agreement or its performance treats the corporation as if it were a  
8599 partnership or results in failure to observe the corporate formalities otherwise applicable to the  
8600 matters governed by the agreement.

8601 (7) Incorporators or subscribers for shares may act as shareholders with respect to an  
8602 agreement authorized by this section if no shares have been issued when the agreement is  
8603 made.

8604 Section 270. Section **16-10a-801** is amended to read:

8605 **16-10a-801. Requirement for and duties of board of directors.**

8606 (1) Except as provided in Section 16-10a-732, each corporation [~~must~~] shall have a  
8607 board of directors.

8608 (2) All corporate powers shall be exercised by or under the authority of, and the  
8609 business and affairs of the corporation managed under the direction of, its board of directors,  
8610 subject to any limitation set forth in the articles of incorporation or in an agreement authorized  
8611 under Section 16-10a-732.

8612 Section 271. Section **16-10a-803** is amended to read:

8613 **16-10a-803. Number and election of directors.**

8614 (1) (a) Except as provided in Subsection (1)(b), a corporation's board of directors  
8615 [~~must~~] shall consist of a minimum of three individuals.

8616 (b) (i) Before any shares are issued, a corporation's board of directors may consist of  
8617 one or more individuals.

8618 (ii) After shares are issued and for as long as a corporation has fewer than three  
8619 shareholders entitled to vote for the election of directors, its board of directors may consist of a  
8620 number of individuals equal to or greater than the number of those shareholders.

8621 (c) The number of directors shall be specified in or fixed in accordance with the  
8622 bylaws. Unless otherwise provided in the articles of incorporation, the number of initial  
8623 directors stated in the articles of incorporation as originally filed with the division, if initial  
8624 directors are so named in the articles of incorporation, shall be superseded by a provision in  
8625 the bylaws specifying the number of authorized directors.

8626 (d) The number of directors may be increased or decreased from time to time by  
8627 amendment to the bylaws, but no decrease may have the effect of shortening the term of any  
8628 incumbent director.

8629 (e) In the absence of a provision in the bylaws or articles of incorporation fixing the  
8630 number of individuals composing a board of directors, the number shall be the greater of:

8631 (i) the number of directors then in office; or

8632 (ii) the minimum number of directors permitted by this section.

8633 (2) The bylaws may establish a variable range for the size of the board of directors by  
8634 fixing a minimum and maximum number of directors. If a range is established, the number of  
8635 directors may be fixed or changed from time to time within the range by the shareholders or  
8636 the board of directors.

8637 (3) Directors are elected at each annual meeting of the shareholders except as provided  
8638 in Section 16-10a-806.

8639 Section 272. Section **16-10a-808** is amended to read:

8640 **16-10a-808. Removal of directors by shareholders.**

8641 (1) The shareholders may remove one or more directors with or without cause unless  
8642 the articles of incorporation provide that directors may be removed only for cause.

8643 (2) If a director is elected by a voting group of shareholders, only the shareholders of  
8644 that voting group may participate in the vote to remove him.

8645 (3) If cumulative voting is in effect, a director may not be removed if the number of  
8646 votes sufficient to elect the director under cumulative voting is voted against removal. If  
8647 cumulative voting is not in effect, a director may be removed only if the number of votes cast  
8648 to remove the director exceeds the number of votes cast against removal.

8649 (4) A director may be removed by the shareholders only at a meeting called for the  
8650 purpose of removing the director and the meeting notice [~~must~~] shall state that the purpose, or  
8651 one of the purposes, of the meeting is removal of the director.

8652 (5) A director who is removed pursuant to this section may deliver to the division for  
8653 filing a statement to that effect pursuant to Section 16-10a-1608.

8654 Section 273. Section **16-10a-822** is amended to read:

8655 **16-10a-822. Notice of meeting.**

8656 (1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise,  
8657 regular meetings of the board of directors may be held without notice of the date, time, place,  
8658 or purposes of the meeting.

8659 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter  
8660 period, special meetings of the board of directors [~~must~~] shall be preceded by at least two days'  
8661 notice of the date, time, and place of the meeting. The notice need not describe the purpose of  
8662 the special meeting unless required by the articles of incorporation, bylaws, or this chapter.

8663 Section 274. Section **16-10a-823** is amended to read:

8664 **16-10a-823. Waiver of notice.**

8665 (1) A director may waive any notice of a meeting before or after the date and time of  
8666 the meeting stated in the notice. Except as provided by Subsection (2), the waiver [~~must~~] shall  
8667 be in writing and signed by the director entitled to the notice. The waiver shall be delivered to  
8668 the corporation for filing with the corporate records, but delivery and filing are not conditions  
8669 to its effectiveness.

8670 (2) A director's attendance at or participation in a meeting waives any required notice  
8671 to the director of the meeting unless the director at the beginning of the meeting, or promptly  
8672 upon the director's arrival, objects to holding the meeting or transacting business at the  
8673 meeting because of lack of notice or defective notice, and does not thereafter vote for or assent  
8674 to action taken at the meeting.

8675 Section 275. Section **16-10a-825** is amended to read:

8676 **16-10a-825. Committees.**

8677 (1) Unless the articles of incorporation or bylaws provide otherwise, a board of  
8678 directors may create one or more committees and appoint members of the board of directors to  
8679 serve on them. Each committee [~~must~~] shall have two or more members, who serve at the  
8680 pleasure of the board of directors.

8681 (2) The creation of a committee and appointment of members to it [~~must~~] shall be

8682 approved by the greater of:

8683 (a) a majority of all the directors in office when the action is taken; or

8684 (b) the number of directors required by the articles of incorporation or bylaws to take  
8685 action under Section 16-10a-824.

8686 (3) Sections 16-10a-820 through 16-10a-824, which govern meetings, action without  
8687 meeting, notice, waiver of notice, and quorum and voting requirements of the board of  
8688 directors, apply to committees and their members as well.

8689 (4) To the extent specified by the board of directors or in the articles of incorporation  
8690 or bylaws, each committee may exercise the authority of the board of directors under Section  
8691 16-10a-801.

8692 (5) The creation of, delegation of authority to, or action by a committee does not alone  
8693 constitute compliance by a director with the standards of conduct described in Section  
8694 16-10a-840.

8695 Section 276. Section **16-10a-904** is amended to read:

8696 **16-10a-904. Advance of expenses for directors.**

8697 (1) A corporation may pay for or reimburse the reasonable expenses incurred by a  
8698 director who is a party to a proceeding in advance of final disposition of the proceeding if:

8699 (a) the director furnishes the corporation a written affirmation of his good faith belief  
8700 that he has met the applicable standard of conduct described in Section 16-10a-902;

8701 (b) the director furnishes to the corporation a written undertaking, executed personally  
8702 or on his behalf, to repay the advance if it is ultimately determined that he did not meet the  
8703 standard of conduct; and

8704 (c) a determination is made that the facts then known to those making the  
8705 determination would not preclude indemnification under this part.

8706 (2) The undertaking required by Subsection (1)(b) [~~must~~] shall be an unlimited general  
8707 obligation of the director but need not be secured and may be accepted without reference to  
8708 financial ability to make repayment.

8709 (3) Determinations and authorizations of payments under this section shall be made in

8710 the manner specified in Section 16-10a-906.

8711 Section 277. Section **16-10a-1003** is amended to read:

8712 **16-10a-1003. Amendment by board of directors and shareholders.**

8713 (1) A corporation's board of directors may propose one or more amendments to the  
8714 articles of incorporation for submission to the shareholders.

8715 (2) For an amendment to the articles of incorporation proposed pursuant to Subsection  
8716 (1) to be adopted:

8717 (a) the board of directors [~~must~~] shall recommend the amendment to the shareholders  
8718 unless the board determines that, because of conflicts of interest or other special  
8719 circumstances, it should make no recommendation and communicates the basis for its  
8720 determination to the shareholders with the amendment; and

8721 (b) shareholders entitled to vote on the amendment [~~must~~] shall approve the  
8722 amendment as provided in Subsection (5).

8723 (3) The board of directors may condition its submission of the proposed amendment  
8724 on any basis.

8725 (4) The corporation shall give notice, in accordance with Section 16-10a-705, of the  
8726 shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled  
8727 to vote on the proposed amendment. The notice of the meeting [~~must~~] shall state that one of  
8728 the purposes of the meeting is to consider the proposed amendment and it [~~must~~] shall contain  
8729 or be accompanied by a copy or summary of the amendment.

8730 (5) Unless this chapter, the articles of incorporation, the bylaws, [~~f~~]if authorized by the  
8731 articles of incorporation[~~g~~], or the board of directors acting pursuant to Subsection (3) require  
8732 a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

8733 (a) a majority of the votes entitled to be cast on the amendment by any voting group  
8734 with respect to which the amendment would create dissenters' rights;

8735 (b) a majority of the votes entitled to be cast on the amendment by any voting group  
8736 with respect to which the amendment would materially and adversely affect rights in respect of  
8737 the shares of the voting group because it:

- 8738 (i) alters or abolishes a preferential right of the shares;
- 8739 (ii) creates, alters, or abolishes a right in respect of redemption, including a provision  
8740 respecting a sinking fund for the redemption or repurchase, of the shares;
- 8741 (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares  
8742 or other securities;
- 8743 (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate  
8744 votes, other than a limitation by dilution through issuance of shares or other securities with  
8745 similar voting rights; or
- 8746 (v) reduces the number of shares owned by the shareholder to a fraction of a share or  
8747 scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be  
8748 voided under Section 16-10a-604; and
- 8749 (c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting  
8750 group entitled to vote on the amendment.
- 8751 (6) If any amendment to the articles of incorporation would impose personal liability  
8752 on shareholders for the debts of a corporation, it must be approved by all of the outstanding  
8753 shares affected, regardless of limitations or restrictions on the voting rights of the shares.
- 8754 Section 278. Section **16-10a-1007** is amended to read:
- 8755 **16-10a-1007. Restated articles of incorporation.**
- 8756 (1) A corporation's board of directors may restate its articles of incorporation at any  
8757 time with or without shareholder action. A corporation's incorporators may restate its articles  
8758 of incorporation at any time if the corporation has not issued shares and if no directors have  
8759 been appointed.
- 8760 (2) The restatement may include one or more amendments to the articles of  
8761 incorporation. If the restatement includes an amendment requiring shareholder approval, it  
8762 must be adopted as provided in Section 16-10a-1003.
- 8763 (3) If the board of directors submits a restatement for shareholder action, the  
8764 corporation shall give notice, in accordance with Section 16-10a-705, to each shareholder  
8765 entitled to vote on the restatement, of the proposed shareholders' meeting at which the

8766 restatement will be voted upon. The notice [~~must~~] shall state that the purpose, or one of the  
8767 purposes, of the meeting is to consider the proposed restatement and the notice shall contain or  
8768 be accompanied by a copy of the restatement that identifies any amendment or other change it  
8769 would make in the articles of incorporation.

8770 (4) A corporation restating its articles of incorporation shall deliver to the division for  
8771 filing articles of restatement setting forth:

8772 (a) the name of the corporation;

8773 (b) the text of the restated articles of incorporation;

8774 (c) if the restatement contains an amendment to the articles of incorporation, the  
8775 information required to be set forth in articles of amendment by Section 16-10a-1006;

8776 (d) if the restatement does not contain an amendment to the articles of incorporation, a  
8777 statement to that effect; and

8778 (e) if the restatement was adopted by the board of directors or incorporators without  
8779 shareholder action, a statement as to how the restatement was adopted and that shareholder  
8780 action was not required.

8781 (5) Upon filing by the division or at any later effective date determined pursuant to  
8782 Section 16-10a-123, restated articles of incorporation supersede the original articles of  
8783 incorporation and all prior amendments to them.

8784 Section 279. Section **16-10a-1022** is amended to read:

8785 **16-10a-1022. Bylaw changing quorum or voting requirement for directors.**

8786 (1) A bylaw that fixes a greater quorum or voting requirement for the board of  
8787 directors than is required by this chapter may be amended or repealed:

8788 (a) if originally adopted by the shareholders, only by the shareholders, unless  
8789 otherwise permitted as contemplated by Subsection (2); or

8790 (b) if originally adopted by the board of directors, by the shareholders or unless  
8791 otherwise provided in the articles of incorporation or bylaws, by the board of directors.

8792 (2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or  
8793 voting requirement for the board of directors may provide that it may be amended or repealed

8794 only by a specified vote of either the shareholders or the board of directors.

8795 (3) Action by the board of directors under Subsection (1)(b) to amend or repeal a  
8796 bylaw that changes the quorum or voting requirement for the board of directors [~~must~~] shall  
8797 meet the same quorum requirement and be adopted by the same vote required to take action  
8798 under the quorum and voting requirement then in effect or proposed to be adopted, whichever  
8799 is greater.

8800 Section 280. Section **16-10a-1023** is amended to read:

8801 **16-10a-1023. Bylaw provisions relating to election of directors.**

8802 (1) A corporation that has shares listed on a national securities exchange or regularly  
8803 traded in a market maintained by one or more members of a national or affiliated securities  
8804 association may elect in its bylaws to be governed in the election of directors by Subsection  
8805 (2) unless the articles of incorporation:

8806 (a) specifically prohibit the adoption of a bylaw electing to be governed by this  
8807 section;

8808 (b) alter the vote required by Subsection 16-10a-728(2); or

8809 (c) provide for cumulative voting.

8810 (2) A corporation may elect to be governed in the election of directors as follows:

8811 (a) Each vote entitled to be cast may be voted for or against up to that number of  
8812 candidates that is equal to the number of directors to be elected, or the shareholder may  
8813 indicate abstention, but without cumulating the votes.

8814 (b) To be elected, a nominee [~~must~~] shall receive a plurality of the votes cast by  
8815 shareholders of shares entitled to vote in the election at a meeting at which a quorum is  
8816 present.

8817 (c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more  
8818 votes against than for election shall serve as a director for a term that terminates on the earlier  
8819 of:

8820 (i) 90 days after the day on which the corporation certifies the voting results; or

8821 (ii) the day on which a person is selected by the board of directors to fill the office

8822 held by the director, which selection constitutes the filling of a vacancy by the board for the  
8823 purpose of Section 16-10a-810.

8824 (d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes  
8825 against than for election may not serve as a director beyond the 90-day period allowed by  
8826 Subsection (2)(c).

8827 (e) The board of directors may select any qualified person to fill the office held by a  
8828 director who receives more votes against than for election.

8829 (3) (a) Subsection (2) does not apply to an election of a director by a voting group if  
8830 there are more candidates for election by the voting group than the number of directors to be  
8831 elected, one or more of whom are properly proposed by shareholders.

8832 (b) The determination of the number of candidates under Subsection (3)(a) is made:

8833 (i) at the expiration of a time fixed by the articles of incorporation or bylaws for the  
8834 advance notification of director candidates; or

8835 (ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of  
8836 directors not more than 14 days before notice is given of the meeting at which the election is  
8837 to occur.

8838 (4) A person may not be considered a candidate for the purpose of Subsection (3) if  
8839 the board of directors determines before the notice of meeting is given that the person's  
8840 candidacy does not create a bona fide election contest.

8841 (5) A bylaw electing to be governed by this section may be repealed:

8842 (a) by the shareholders if originally adopted by the shareholders, unless otherwise  
8843 provided by the bylaws; or

8844 (b) by the board of directors or the shareholders, if originally adopted by the board of  
8845 directors.

8846 Section 281. Section **16-10a-1101** is amended to read:

8847 **16-10a-1101. Merger.**

8848 (1) One or more domestic corporations may merge into another domestic corporation  
8849 if the board of directors of each corporation adopts and its shareholders, if required by Section

8850 16-10a-1103, approve the plan of merger.

8851 (2) The plan of merger referred to in Subsection (1) [~~must~~] shall set forth:

8852 (a) the name of each corporation planning to merge and the name of the surviving  
8853 corporation into which each other corporation plans to merge;

8854 (b) the terms and conditions of the merger;

8855 (c) the manner and basis of converting the shares of each corporation into shares,  
8856 obligations, or other securities of the surviving or any other corporation or into cash or other  
8857 property in whole or part; and

8858 (d) any amendments to the articles of incorporation of the surviving corporation to be  
8859 effected by the merger.

8860 (3) The plan of merger may set forth other provisions relating to the merger.

8861 Section 282. Section **16-10a-1102** is amended to read:

8862 **16-10a-1102. Share exchange.**

8863 (1) A domestic corporation may acquire all of the outstanding shares of one or more  
8864 classes or series of one or more domestic corporations if the board of directors of each  
8865 corporation adopts a plan of share exchange and the shareholders of the corporation, if  
8866 required by Section 16-10a-1103, approve the plan of share exchange.

8867 (2) The plan of share exchange referred to in Subsection (1) [~~must~~] shall set forth:

8868 (a) the name of each corporation whose shares will be acquired and the name of the  
8869 acquiring corporation;

8870 (b) the terms and conditions of the share exchange; and

8871 (c) the manner and basis of exchanging the shares to be acquired for shares,  
8872 obligations, or other securities of the acquiring or any other corporation or for money or other  
8873 property in whole or part.

8874 (3) The plan of share exchange may set forth other provisions relating to the share  
8875 exchange.

8876 (4) This section does not limit the power of a corporation to acquire all or part of the  
8877 shares of one or more classes or series of another corporation through a voluntary exchange of

8878 shares or otherwise.

8879 Section 283. Section **16-10a-1103** is amended to read:

8880 **16-10a-1103. Action on plan.**

8881 (1) After adopting a plan of merger or share exchange, the board of directors of each  
8882 corporation party to the merger, and the board of directors of each corporation whose shares  
8883 will be acquired in the share exchange, shall submit the plan of merger to its shareholders for  
8884 approval, except as provided in:

8885 (a) Subsection (7);

8886 (b) Section 16-10a-1104; or

8887 (c) the plan of share exchange.

8888 (2) For a plan of merger or share exchange to be approved:

8889 (a) the board of directors [~~must~~] shall recommend the plan of merger or share  
8890 exchange to the shareholders, unless the board of directors determines that because of conflict  
8891 of interest or other special circumstances it should make no recommendation and  
8892 communicates the basis for its determination to the shareholders with the plan; and

8893 (b) the shareholders entitled to vote on the plan of merger or share exchange [~~must~~]  
8894 shall approve the plan as provided in Subsection (5).

8895 (3) The board of directors may condition its submission of the proposed merger or  
8896 share exchange on any basis.

8897 (4) The corporation shall give notice of the shareholders' meeting in accordance with  
8898 Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share  
8899 exchange. The notice [~~must~~] shall state that one of the purposes of the meeting is to consider  
8900 the plan of merger or share exchange and contain or be accompanied by a copy or summary of  
8901 the plan.

8902 (5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended  
8903 bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the  
8904 plan of merger or share exchange to be authorized [~~must~~] shall be approved by each voting  
8905 group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on

8906 the plan by that voting group.

8907 (6) Separate voting by voting groups is required on a plan of:

8908 (a) merger if the plan contains a provision that, if contained in an amendment to the  
8909 articles of incorporation, would require action by one or more separate voting groups on the  
8910 amendment under Section 16-10a-1004; and

8911 (b) share exchange by each class or series of shares included in the share exchange,  
8912 with each class or series constituting a separate voting group.

8913 (7) Action by the shareholders of the surviving corporation on a plan of merger is not  
8914 required if:

8915 (a) the articles of incorporation of the surviving corporation will not differ, except for  
8916 amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the  
8917 merger;

8918 (b) each shareholder of the surviving corporation whose shares were outstanding  
8919 immediately before the merger will hold the same number of shares, with identical  
8920 designations, preferences, limitations, and relative rights, immediately after the merger;

8921 (c) the number of voting shares outstanding immediately after the merger, plus the  
8922 number of voting shares issuable as a result of the merger either by the conversion of securities  
8923 issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the  
8924 merger, will not exceed by more than 20% the total number of voting shares of the surviving  
8925 corporation outstanding immediately before the merger; and

8926 (d) the number of participating shares outstanding immediately after the merger, plus  
8927 the number of participating shares issuable as a result of the merger either by the conversion of  
8928 securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant  
8929 to the merger, will not exceed by more than 20% the total number of participating shares  
8930 outstanding immediately before the merger.

8931 (8) As used in Subsection (7):

8932 (a) "Participating shares" means shares that entitle their holders to participate without  
8933 limitation in distributions.

8934 (b) "Voting shares" means shares that entitle their holders to vote unconditionally in  
8935 elections of directors.

8936 (9) After a plan of merger or share exchange is approved, and at any time before the  
8937 merger or share exchange becomes effective the merger or share exchange may be abandoned,  
8938 subject to any contractual rights, without further shareholder action, in accordance with the  
8939 procedure set forth in the plan of merger or share exchange or, if none is set forth, in the  
8940 manner determined by the board of directors.

8941 (10) If a merger or share exchange is abandoned after articles of merger or share  
8942 exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a  
8943 delayed effective date, the merger or share exchange may be prevented from becoming  
8944 effective by delivering to the division for filing prior to the specified effective time and date a  
8945 statement of abandonment stating that by appropriate corporate action the merger or share  
8946 exchange has been abandoned. The statement of abandonment shall be executed in the same  
8947 manner as the articles of merger or share exchange.

8948 Section 284. Section **16-10a-1202** is amended to read:

8949 **16-10a-1202. Sale of property requiring shareholder approval.**

8950 (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or  
8951 substantially all, of its property, with or without the good will, otherwise than in the usual and  
8952 regular course of business, on the terms and conditions and for the consideration determined  
8953 by the board of directors, if the board of directors proposes and the shareholders approve the  
8954 transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the  
8955 property of a corporation, with or without the good will, other than in the usual and regular  
8956 course of business and other than pursuant to a court order, in connection with its dissolution  
8957 is subject to the requirements of this section, but a sale, lease, exchange, or other disposition  
8958 of all, or substantially all, of the property of a corporation, with or without the good will, that  
8959 is pursuant to a court order is not subject to the requirements of this section.

8960 (2) If a corporation is entitled to vote or otherwise consent, other than in the usual and  
8961 regular course of its business, with respect to the sale, lease, exchange, or other disposition of

8962 all, or substantially all, of the property, with or without the good will, of another entity which  
8963 it controls, and if the shares or other interests held by the corporation in the other entity  
8964 constitute all, or substantially all, of the property of the corporation, then the corporation shall  
8965 consent to the transaction only if the board of directors proposes and the shareholders approve  
8966 the consent.

8967 (3) For a transaction described in Subsection (1) or a consent described in Subsection  
8968 (2) to be authorized:

8969 (a) the board of directors [~~must~~] shall recommend the transaction or the consent to the  
8970 shareholders unless the board of directors determines that because of conflict of interest or  
8971 other special circumstances it should make no recommendation and communicates the basis  
8972 for its determination to the shareholders with the submission of the proposed transaction; and

8973 (b) the shareholders entitled to vote on the transaction or the consent [~~must~~] shall  
8974 approve the transaction or the consent as provided in Subsections (5) and (6).

8975 (4) The board of directors may condition the effectiveness of the transaction or the  
8976 consent on any basis.

8977 (5) The corporation shall give notice in accordance with Section 16-10a-705 to each  
8978 shareholder entitled to vote on the transaction described in Subsection (1) or the consent  
8979 described in Subsection (2), of the shareholders' meeting at which the transaction or the  
8980 consent will be voted upon. The notice [~~must~~] shall:

8981 (a) state that the purpose, or one of the purposes, of the meeting is to consider:

8982 (i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other  
8983 disposition of all, or substantially all, of the property of the corporation; or

8984 (ii) in the case of action pursuant to Subsection (2), the corporation's consent to the  
8985 sale, lease, exchange, or other disposition of all, or substantially all, of the property of another  
8986 entity, [~~f~~]which shall be identified in the notice[~~g~~], the shares or other interests of which held  
8987 by the corporation constitute all, or substantially all, of the property of the corporation; and

8988 (b) contain or be accompanied by a description of the transaction, in the case of action  
8989 pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the

8990 case of action pursuant to Subsection (2).

8991 (6) Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as  
8992 amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to  
8993 Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the  
8994 consent described in Subsection (2) [~~must~~] shall be approved by each voting group entitled to  
8995 vote on the transaction or the consent by a majority of all the votes entitled to be cast on the  
8996 transaction or the consent by that voting group.

8997 (7) After a transaction described in Subsection (1) or a consent described in  
8998 Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or  
8999 revoked by the corporation's board of directors subject to any contractual rights or other  
9000 limitation on the abandonment, withholding, or revocation, without further shareholder action.

9001 (8) A transaction that constitutes a distribution is governed by Section 16-10a-640 and  
9002 not by this section.

9003 Section 285. Section **16-10a-1303** is amended to read:

9004 **16-10a-1303. Dissent by nominees and beneficial owners.**

9005 (1) A record shareholder may assert dissenters' rights as to fewer than all the shares  
9006 registered in his name only if the shareholder dissents with respect to all shares beneficially  
9007 owned by any one person and causes the corporation to receive written notice which states the  
9008 dissent and the name and address of each person on whose behalf dissenters' rights are being  
9009 asserted. The rights of a partial dissenter under this subsection are determined as if the shares  
9010 as to which the shareholder dissents and the other shares held of record by him were registered  
9011 in the names of different shareholders.

9012 (2) A beneficial shareholder may assert dissenters' rights as to shares held on his  
9013 behalf only if:

9014 (a) the beneficial shareholder causes the corporation to receive the record shareholder's  
9015 written consent to the dissent not later than the time the beneficial shareholder asserts  
9016 dissenters' rights; and

9017 (b) the beneficial shareholder dissents with respect to all shares of which he is the

9018 beneficial shareholder.

9019 (3) The corporation may require that, when a record shareholder dissents with respect  
9020 to the shares held by any one or more beneficial shareholders, each beneficial shareholder  
9021 [~~must~~] shall certify to the corporation that both he and the record shareholders of all shares  
9022 owned beneficially by him have asserted, or will timely assert, dissenters' rights as to all the  
9023 shares unlimited on the ability to exercise dissenters' rights. The certification requirement  
9024 [~~must~~] shall be stated in the dissenters' notice given pursuant to Section 16-10a-1322.

9025 Section 286. Section **16-10a-1320** is amended to read:

9026 **16-10a-1320. Notice of dissenters' rights.**

9027 (1) If a proposed corporate action creating dissenters' rights under Section  
9028 16-10a-1302 is submitted to a vote at a shareholders' meeting, the meeting notice [~~must~~] shall  
9029 be sent to all shareholders of the corporation as of the applicable record date, whether or not  
9030 they are entitled to vote at the meeting. The notice shall state that shareholders are or may be  
9031 entitled to assert dissenters' rights under this part. The notice [~~must~~] shall be accompanied by  
9032 a copy of this part and the materials, if any, that under this chapter are required to be given the  
9033 shareholders entitled to vote on the proposed action at the meeting. Failure to give notice as  
9034 required by this subsection does not affect any action taken at the shareholders' meeting for  
9035 which the notice was to have been given.

9036 (2) If a proposed corporate action creating dissenters' rights under Section  
9037 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704,  
9038 any written or oral solicitation of a shareholder to execute a written consent to the action  
9039 contemplated by Section 16-10a-704 [~~must~~] shall be accompanied or preceded by a written  
9040 notice stating that shareholders are or may be entitled to assert dissenters' rights under this  
9041 part, by a copy of this part, and by the materials, if any, that under this chapter would have  
9042 been required to be given to shareholders entitled to vote on the proposed action if the  
9043 proposed action were submitted to a vote at a shareholders' meeting. Failure to give written  
9044 notice as provided by this subsection does not affect any action taken pursuant to Section  
9045 16-10a-704 for which the notice was to have been given.

9046 Section 287. Section **16-10a-1321** is amended to read:

9047 **16-10a-1321. Demand for payment -- Eligibility and notice of intent.**

9048 (1) If a proposed corporate action creating dissenters' rights under Section  
9049 16-10a-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to  
9050 assert dissenters' rights:

9051 (a) [~~must~~] shall cause the corporation to receive, before the vote is taken, written  
9052 notice of his intent to demand payment for shares if the proposed action is effectuated; and

9053 (b) may not vote any of his shares in favor of the proposed action.

9054 (2) If a proposed corporate action creating dissenters' rights under Section  
9055 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704,  
9056 a shareholder who wishes to assert dissenters' rights may not execute a writing consenting to  
9057 the proposed corporate action.

9058 (3) In order to be entitled to payment for shares under this part, unless otherwise  
9059 provided in the articles of incorporation, bylaws, or a resolution adopted by the board of  
9060 directors, a shareholder [~~must~~] shall have been a shareholder with respect to the shares for  
9061 which payment is demanded as of the date the proposed corporate action creating dissenters'  
9062 rights under Section 16-10a-1302 is approved by the shareholders, if shareholder approval is  
9063 required, or as of the effective date of the corporate action if the corporate action is authorized  
9064 other than by a vote of shareholders.

9065 (4) A shareholder who does not satisfy the requirements of Subsections (1) through (3)  
9066 is not entitled to payment for shares under this part.

9067 Section 288. Section **16-10a-1322** is amended to read:

9068 **16-10a-1322. Dissenters' notice.**

9069 (1) If proposed corporate action creating dissenters' rights under Section 16-10a-1302  
9070 is authorized, the corporation shall give a written dissenters' notice to all shareholders who are  
9071 entitled to demand payment for their shares under this part.

9072 (2) The dissenters' notice required by Subsection (1) [~~must~~] shall be sent no later than  
9073 10 days after the effective date of the corporate action creating dissenters' rights under Section

9074 16-10a-1302, and shall:

9075 (a) state that the corporate action was authorized and the effective date or proposed  
9076 effective date of the corporate action;

9077 (b) state an address at which the corporation will receive payment demands and an  
9078 address at which certificates for certificated shares [~~must~~] shall be deposited;

9079 (c) inform holders of uncertificated shares to what extent transfer of the shares will be  
9080 restricted after the payment demand is received;

9081 (d) supply a form for demanding payment, which form requests a dissenter to state an  
9082 address to which payment is to be made;

9083 (e) set a date by which the corporation must receive the payment demand and by  
9084 which certificates for certificated shares must be deposited at the address indicated in the  
9085 dissenters' notice, which dates may not be fewer than 30 nor more than 70 days after the date  
9086 the dissenters' notice required by Subsection (1) is given;

9087 (f) state the requirement contemplated by Subsection 16-10a-1303(3), if the  
9088 requirement is imposed; and

9089 (g) be accompanied by a copy of this part.

9090 Section 289. Section **16-10a-1323** is amended to read:

9091 **16-10a-1323. Procedure to demand payment.**

9092 (1) A shareholder who is given a dissenters' notice described in Section 16-10a-1322,  
9093 who meets the requirements of Section 16-10a-1321, and wishes to assert dissenters' rights  
9094 [~~must~~] shall, in accordance with the terms of the dissenters' notice:

9095 (a) cause the corporation to receive a payment demand, which may be the payment  
9096 demand form contemplated in Subsection 16-10a-1322(2)(d), duly completed, or may be  
9097 stated in another writing;

9098 (b) deposit certificates for his certificated shares in accordance with the terms of the  
9099 dissenters' notice; and

9100 (c) if required by the corporation in the dissenters' notice described in Section  
9101 16-10a-1322, as contemplated by Section 16-10a-1327, certify in writing, in or with the

9102 payment demand, whether or not he or the person on whose behalf he asserts dissenters' rights  
9103 acquired beneficial ownership of the shares before the date of the first announcement to news  
9104 media or to shareholders of the terms of the proposed corporate action creating dissenters'  
9105 rights under Section 16-10a-1302.

9106 (2) A shareholder who demands payment in accordance with Subsection (1) retains all  
9107 rights of a shareholder except the right to transfer the shares until the effective date of the  
9108 proposed corporate action giving rise to the exercise of dissenters' rights and has only the right  
9109 to receive payment for the shares after the effective date of the corporate action.

9110 (3) A shareholder who does not demand payment and deposit share certificates as  
9111 required, by the date or dates set in the dissenters' notice, is not entitled to payment for shares  
9112 under this part.

9113 Section 290. Section **16-10a-1325** is amended to read:

9114 **16-10a-1325. Payment.**

9115 (1) Except as provided in Section 16-10a-1327, upon the later of the effective date of  
9116 the corporate action creating dissenters' rights under Section 16-10a-1302, and receipt by the  
9117 corporation of each payment demand pursuant to Section 16-10a-1323, the corporation shall  
9118 pay the amount the corporation estimates to be the fair value of the dissenter's shares, plus  
9119 interest to each dissenter who has complied with Section 16-10a-1323, and who meets the  
9120 requirements of Section 16-10a-1321, and who has not yet received payment.

9121 (2) Each payment made pursuant to Subsection (1) [~~must~~] shall be accompanied by:

9122 (a) (i) (A) the corporation's balance sheet as of the end of its most recent fiscal year, or  
9123 if not available, a fiscal year ending not more than 16 months before the date of payment;

9124 (B) an income statement for that year;

9125 (C) a statement of changes in shareholders' equity for that year and a statement of cash  
9126 flow for that year, if the corporation customarily provides such statements to shareholders; and

9127 (D) the latest available interim financial statements, if any;

9128 (ii) the balance sheet and statements referred to in Subsection (2)(a)(i) [~~must~~] shall be  
9129 audited if the corporation customarily provides audited financial statements to shareholders;

- 9130 (b) a statement of the corporation's estimate of the fair value of the shares and the
- 9131 amount of interest payable with respect to the shares;
- 9132 (c) a statement of the dissenter's right to demand payment under Section 16-10a-1328;
- 9133 and
- 9134 (d) a copy of this part.

9135 Section 291. Section **16-10a-1330** is amended to read:

9136 **16-10a-1330. Judicial appraisal of shares -- Court action.**

9137 (1) If a demand for payment under Section 16-10a-1328 remains unresolved, the

9138 corporation shall commence a proceeding within 60 days after receiving the payment demand

9139 contemplated by Section 16-10a-1328, and petition the court to determine the fair value of the

9140 shares and the amount of interest. If the corporation does not commence the proceeding

9141 within the 60-day period, it shall pay each dissenter whose demand remains unresolved the

9142 amount demanded.

9143 (2) The corporation shall commence the proceeding described in Subsection (1) in the

9144 district court of the county in this state where the corporation's principal office, or if it has no

9145 principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it

9146 shall commence the proceeding in the county in this state where the principal office of the

9147 domestic corporation merged with, or whose shares were acquired by, the foreign corporation

9148 was located, or, if the domestic corporation did not have its principal office in this state at the

9149 time of the transaction, in Salt Lake County.

9150 (3) The corporation shall make all dissenters who have satisfied the requirements of

9151 Sections 16-10a-1321, 16-10a-1323, and 16-10a-1328, whether or not they are residents of

9152 this state whose demands remain unresolved, parties to the proceeding commenced under

9153 Subsection (2) as an action against their shares. All such dissenters who are named as parties

9154 [~~must~~] shall be served with a copy of the petition. Service on each dissenter may be by

9155 registered or certified mail to the address stated in his payment demand made pursuant to

9156 Section 16-10a-1328. If no address is stated in the payment demand, service may be made at

9157 the address stated in the payment demand given pursuant to Section 16-10a-1323. If no

9158 address is stated in the payment demand, service may be made at the address shown on the  
9159 corporation's current record of shareholders for the record shareholder holding the dissenter's  
9160 shares. Service may also be made otherwise as provided by law.

9161 (4) The jurisdiction of the court in which the proceeding is commenced under  
9162 Subsection (2) is plenary and exclusive. The court may appoint one or more persons as  
9163 appraisers to receive evidence and recommend decision on the question of fair value. The  
9164 appraisers have the powers described in the order appointing them, or in any amendment to it.  
9165 The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

9166 (5) Each dissenter made a party to the proceeding commenced under Subsection (2) is  
9167 entitled to judgment:

9168 (a) for the amount, if any, by which the court finds that the fair value of his shares,  
9169 plus interest, exceeds the amount paid by the corporation pursuant to Section 16-10a-1325; or

9170 (b) for the fair value, plus interest, of the dissenter's after-acquired shares for which  
9171 the corporation elected to withhold payment under Section 16-10a-1327.

9172 Section 292. Section **16-10a-1402** is amended to read:

9173 **16-10a-1402. Authorization of dissolution after issuance of shares.**

9174 (1) After shares have been issued, dissolution of a corporation may be authorized in  
9175 the manner provided in Subsection (2).

9176 (2) For a proposal to dissolve the corporation to be authorized:

9177 (a) the board of directors must recommend dissolution to the shareholders unless the  
9178 board of directors determines that because of a conflict of interest or other special  
9179 circumstances it should make no recommendation and communicates the basis for its  
9180 determination to the shareholders; and

9181 (b) the shareholders entitled to vote on the proposal must approve the proposal to  
9182 dissolve as provided in Subsection (5).

9183 (3) The board of directors may condition the effectiveness of the dissolution on any  
9184 basis.

9185 (4) The corporation shall give notice in accordance with Section 16-10a-705 to each

9186 shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting  
9187 at which the proposal to dissolve will be voted upon. The notice [~~must~~] shall state that the  
9188 purpose or one of the purposes of the meeting is to consider the proposal to dissolve the  
9189 corporation.

9190 (5) The proposal to dissolve must be approved by each voting group entitled to vote  
9191 separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by  
9192 that voting group, unless a greater vote is required by the articles of incorporation, the initial  
9193 bylaws or the bylaws amended pursuant to Section 16-10a-1021, or the board of directors  
9194 acting pursuant to Subsection (3).

9195 Section 293. Section **16-10a-1404** is amended to read:

9196 **16-10a-1404. Revocation of dissolution.**

9197 (1) A corporation may revoke its dissolution within 120 days after the effective date of  
9198 the dissolution.

9199 (2) Revocation of dissolution [~~must~~] shall be authorized in the same manner as the  
9200 dissolution was authorized unless, in the case of authorization pursuant to Section  
9201 16-10a-1402, that authorization permitted revocation by action of the board of directors alone,  
9202 in which event the board of directors may revoke the dissolution without shareholder action.

9203 (3) After the revocation of dissolution is authorized, the corporation may revoke the  
9204 dissolution by delivering to the division for filing articles of revocation of dissolution, together  
9205 with a copy of its articles of dissolution, that set forth:

9206 (a) the name of the corporation;

9207 (b) the effective date of the dissolution that was revoked;

9208 (c) the date that the revocation of dissolution was authorized;

9209 (d) if pursuant to Subsection (2) the corporation's board of directors or incorporators  
9210 revoked the dissolution authorized under Section 16-10a-1401, a statement to that effect;

9211 (e) if pursuant to Subsection (2) the corporation's board of directors revoked a  
9212 dissolution approved by the shareholders, a statement that the revocation was permitted by  
9213 action by the board of directors alone pursuant to that authorization; and

9214 (f) if the revocation of dissolution was approved pursuant to Subsection (2) by the  
9215 shareholders, the information required by Subsection 16-10a-1403(1)(e).

9216 (4) Revocation of dissolution is effective as provided in Subsection 16-10a-123(1). A  
9217 provision may not be made for a delayed effective date for revocation pursuant to Subsection  
9218 16-10a-123(2).

9219 (5) When the revocation of dissolution is effective, it relates back to and takes effect  
9220 as of the effective date of the dissolution and the corporation may carry on its business as if  
9221 dissolution had never occurred.

9222 Section 294. Section **16-10a-1406** is amended to read:

9223 **16-10a-1406. Disposition of known claims by notification.**

9224 (1) A dissolved corporation may dispose of the known claims against it by following  
9225 the procedures described in this section.

9226 (2) A dissolved corporation electing to dispose of known claims pursuant to this  
9227 section may give written notice of the dissolution to known claimants at any time after the  
9228 effective date of the dissolution. The written notice [~~must~~] shall:

9229 (a) describe the information that must be included in a claim;

9230 (b) provide an address to which written notice of any claim must be given to the  
9231 corporation;

9232 (c) state the deadline, which may not be fewer than 120 days after the effective date of  
9233 the notice, by which the dissolved corporation must receive the claim; and

9234 (d) state that unless sooner barred by any other state statute limiting actions, the claim  
9235 will be barred if not received by the deadline.

9236 (3) Unless sooner barred by any other statute limiting actions, a claim against the  
9237 dissolved corporation is barred if:

9238 (a) a claimant was given notice under Subsection (2) and the claim is not received by  
9239 the dissolved corporation by the deadline; or

9240 (b) the dissolved corporation delivers to the claimant written notice of rejection of the  
9241 claim within 90 days after receipt of the claim and the claimant whose claim was rejected by

9242 the dissolved corporation does not commence a proceeding to enforce the claim within 90  
9243 days after the effective date of the rejection notice.

9244 (4) Claims which are not rejected by the dissolved corporation in writing within 90  
9245 days after receipt of the claim by the dissolved corporation shall be considered accepted.

9246 (5) The failure of the dissolved corporation to give notice to any known claimant  
9247 pursuant to Subsection (2) does not affect the disposition under this section of any claim held  
9248 by any other known claimant.

9249 (6) For purposes of this section, "claim" does not include a contingent liability or a  
9250 claim based on an event occurring after the effective date of dissolution.

9251 Section 295. Section **16-10a-1407** is amended to read:

9252 **16-10a-1407. Disposition of claims by publication -- Disposition in absence of**  
9253 **publication.**

9254 (1) A dissolved corporation may publish notice of its dissolution and request that  
9255 persons with claims against the corporation present them in accordance with the notice.

9256 (2) The notice contemplated in Subsection (1) [~~must~~] shall:

9257 (a) be published:

9258 (i) one time in a newspaper of general circulation in the county where the dissolved  
9259 corporation's principal office is or was located or, if it has no principal office in this state, in  
9260 Salt Lake County; and

9261 (ii) as required in Section 45-1-101;

9262 (b) describe the information that must be included in a claim and provide an address at  
9263 which any claim must be given to the corporation; and

9264 (c) state that unless sooner barred by any other statute limiting actions, the claim will  
9265 be barred if an action to enforce the claim is not commenced within five years after the  
9266 publication of the notice.

9267 (3) If the dissolved corporation publishes a newspaper or website notice in accordance  
9268 with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other  
9269 statute limiting actions, the claim of any claimant against the dissolved corporation is barred

9270 unless the claimant commences an action to enforce the claim against the dissolved  
9271 corporation within five years after the publication date of the notice.

9272 (4) (a) For purposes of this section, "claim" means any claim, including claims of this  
9273 state, whether known, due or to become due, absolute or contingent, liquidated or  
9274 unliquidated, founded on contract, tort, or other legal basis, or otherwise.

9275 (b) For purposes of this section, an action to enforce a claim includes any civil action,  
9276 and any arbitration under any agreement for binding arbitration between the dissolved  
9277 corporation and the claimant.

9278 (5) If a dissolved corporation does not publish a newspaper notice in accordance with  
9279 Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other  
9280 statute limiting actions, the claim of any claimant against the dissolved corporation is barred  
9281 unless the claimant commences an action to enforce the claim against the dissolved  
9282 corporation within seven years after the date the corporation was dissolved.

9283 Section 296. Section **16-10a-1434** is amended to read:

9284 **16-10a-1434. Election to purchase in lieu of dissolution.**

9285 (1) In a proceeding under Subsection 16-10a-1430(2) to dissolve a corporation that  
9286 has no shares listed on a national securities exchange or regularly traded in a market  
9287 maintained by one or more members of a national or affiliated securities association, the  
9288 corporation may elect, or if it fails to elect, one or more shareholders may elect to purchase all  
9289 shares of the corporation owned by the petitioning shareholder, at the fair value of the shares,  
9290 determined as provided in this section. An election pursuant to this section is irrevocable  
9291 unless the court determines that it is equitable to set aside or modify the election.

9292 (2) (a) An election to purchase pursuant to this section may be filed with the court at  
9293 any time within 90 days after the filing of the petition under Subsection 16-10a-1430(2) or at  
9294 any later time as the court in its discretion may allow. If the corporation files an election with  
9295 the court within the 90-day period, or at any later time allowed by the court, to purchase all  
9296 shares of the corporation owned by the petitioning shareholder, the corporation shall purchase  
9297 the shares in the manner provided in this section.

9298 (b) If the corporation does not file an election with the court within the time period,  
9299 but an election to purchase all shares of the corporation owned by the petitioning shareholder  
9300 is filed by one or more shareholders within the time period, the corporation shall, within 10  
9301 days after the later of:

9302 (i) the end of the time period allowed for the filing of elections to purchase under this  
9303 section; or

9304 (ii) notification from the court of an election by shareholders to purchase all shares of  
9305 the corporation owned by the petitioning shareholder as provided in this section, give written  
9306 notice of the election to purchase to all shareholders of the corporation, other than the  
9307 petitioning shareholder. The notice shall state the name and number of shares owned by the  
9308 petitioning shareholder and the name and number of shares owned by each electing  
9309 shareholder. The notice shall advise any recipients who have not participated in the election  
9310 of their right to join in the election to purchase shares in accordance with this section, and of  
9311 the date by which any notice of intent to participate must be filed with the court.

9312 (c) Shareholders who wish to participate in the purchase of shares from the petitioning  
9313 shareholder [~~must~~] shall file notice of their intention to join in the purchase by the electing  
9314 shareholders, no later than 30 days after the effective date of the corporation's notice of their  
9315 right to join in the election to purchase.

9316 (d) All shareholders who have filed with the court an election or notice of their  
9317 intention to participate in the election to purchase the shares of the corporation owned by the  
9318 petitioning shareholder thereby become irrevocably obligated to participate in the purchase of  
9319 shares from the petitioning shareholders upon the terms and conditions of this section, unless  
9320 the court otherwise directs.

9321 (e) After an election has been filed by the corporation or one or more shareholders, the  
9322 proceedings under Subsection 16-10a-1430(2) may not be discontinued or settled, nor may the  
9323 petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the  
9324 court determines that it would be equitable to the corporation and the shareholders, other than  
9325 the petitioning shareholders, to permit any discontinuance, settlement, sale, or other

9326 disposition.

9327 (3) If, within 60 days after the earlier of:

9328 (a) the corporation's filing of an election to purchase all shares of the corporation  
9329 owned by the petitioning shareholder; or

9330 (b) the corporation's mailing of a notice to its shareholders of the filing of an election  
9331 by the shareholders to purchase all shares of the corporation owned by the petitioning  
9332 shareholder, the petitioning shareholder and electing corporation or shareholders reach  
9333 agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the  
9334 court shall enter an order directing the purchase of petitioner's shares, upon the terms and  
9335 conditions agreed to by the parties.

9336 (4) If the parties are unable to reach an agreement as provided for in Subsection (3),  
9337 upon application of any party the court shall stay the proceedings under Subsection  
9338 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the  
9339 day before the date on which the petition under Subsection 16-10a-1430(2) was filed or as of  
9340 any other date the court determines to be appropriate under the circumstances and based on  
9341 the factors the court determines to be appropriate.

9342 (5) (a) Upon determining the fair value of the shares of the corporation owned by the  
9343 petitioning shareholder, the court shall enter an order directing the purchase of the shares upon  
9344 terms and conditions the court determines to be appropriate. The terms and conditions may  
9345 include payment of the purchase price in installments, where necessary in the interests of  
9346 equity, provision for security to assure payment of the purchase price and any additional costs,  
9347 fees, and expenses awarded by the court, and an allocation of shares among shareholders if the  
9348 shares are to be purchased by shareholders.

9349 (b) In allocating the petitioning shareholders' shares among holders of different classes  
9350 of shares, the court shall attempt to preserve the existing distribution of voting rights among  
9351 holders of different share classes to the extent practicable. The court may direct that holders  
9352 of a specific class or classes ~~shall not~~ may not participate in the purchase. The court may not  
9353 require any electing shareholder to purchase more of the shares of the corporation owned by

9354 the petitioning shareholder than the number of shares that the purchasing shareholder may  
9355 have set forth in his election or notice of intent to participate filed with the court as the  
9356 maximum number of shares he is willing to purchase.

9357 (c) Interest may be allowed at the rate and from the date determined by the court to be  
9358 equitable. However, if the court finds that the refusal of the petitioning shareholder to accept  
9359 an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

9360 (d) If the court finds that the petitioning shareholder had probable grounds for relief  
9361 under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder  
9362 reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.

9363 (6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the  
9364 petition to dissolve the corporation under Section 16-10a-1430, and the petitioning  
9365 shareholder shall no longer have any rights or status as a shareholder of the corporation, except  
9366 the right to receive the amounts awarded to him by the court. The award is enforceable in the  
9367 same manner as any other judgment.

9368 (7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days  
9369 after the date the order becomes final, unless before that time the corporation files with the  
9370 court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402  
9371 and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days  
9372 after notice.

9373 (b) Upon filing of the articles of dissolution, the corporation is dissolved in  
9374 accordance with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order  
9375 entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may  
9376 award the petitioning shareholder reasonable fees and expenses in accordance with the  
9377 provisions of Subsection (5)(d). The petitioning shareholder may continue to pursue any  
9378 claims previously asserted on behalf of the corporation.

9379 (8) Any payment by the corporation pursuant to an order under Subsection (3) or (5),  
9380 other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the  
9381 provisions of Section 16-10a-640.

9382 Section 297. Section **16-10a-1506** is amended to read:

9383 **16-10a-1506. Corporate name and assumed corporate name of foreign**  
9384 **corporation.**

9385 (1) Except as provided in Subsection (2), if the corporate name of a foreign  
9386 corporation does not satisfy the requirements of Section 16-10a-401, which applies to  
9387 domestic corporations, the foreign corporation, in order to obtain authority to transact business  
9388 in this state, [~~must~~] shall assume for use in this state a name that satisfies the requirements of  
9389 Section 16-10a-401.

9390 (2) A foreign corporation may obtain authority to transact business in this state with a  
9391 name that does not meet the requirements of Subsection (1) because it is not distinguishable as  
9392 required under Subsection 16-10a-401(2), if the foreign corporation delivers to the division for  
9393 filing either:

9394 (a) a written consent to the foreign corporation's use of the name, given and signed by  
9395 the other person entitled to the use of the name together with a written undertaking by the  
9396 other person, in a form satisfactory to the division, to change its name to a name that is  
9397 distinguishable from the name of the applicant; or

9398 (b) a certified copy of a final judgment of a court of competent jurisdiction  
9399 establishing the prior right of the foreign corporation to use the requested name in this state.

9400 (3) A foreign corporation may use in this state the name, including the fictitious name,  
9401 of another domestic or foreign corporation that is used or registered in this state if the other  
9402 corporation is incorporated or authorized to transact business in this state and the foreign  
9403 corporation:

9404 (a) has merged with the other corporation; or

9405 (b) has been formed by reorganization of the other corporation.

9406 (4) If a foreign corporation authorized to transact business in this state, whether under  
9407 its corporate name or an assumed corporate name, changes its corporate name to one that does  
9408 not satisfy the requirements of Subsections (1) through (3), or the requirements of Section  
9409 16-10a-401, it may not transact business in this state under the changed name but [~~must~~] shall

9410 use an assumed corporate name that does meet the requirements of this section and [~~must~~]  
9411 shall deliver to the division for filing an amended application for authority to transact business  
9412 pursuant to Section 16-10a-1504.

9413 Section 298. Section **16-10a-1507** is amended to read:

9414 **16-10a-1507. Registered name of foreign corporation.**

9415 (1) A foreign corporation may register its corporate name as provided in this section if  
9416 the name would be available for use as a corporate name for a domestic corporation under  
9417 Section 16-10a-401. If the foreign corporation's corporate name would not be available for  
9418 such use, then the foreign corporation may register its corporate name modified by the  
9419 addition of any of the following words or abbreviations, if the modified name would be  
9420 available for use under Section 16-10a-401: "corporation," "incorporated," "company,"  
9421 "corp.," "inc.," or "co."

9422 (2) A foreign corporation registers its corporate name, or its corporate name with any  
9423 addition permitted by Subsection (1), by delivering to the division for filing an application for  
9424 registration:

9425 (a) setting forth its corporate name, the name to be registered which [~~must~~] shall meet  
9426 the requirements of Section 16-10a-401 that apply to domestic corporations, the state or  
9427 country and date of incorporation, and a brief description of the nature of the business in  
9428 which it is engaged; and

9429 (b) accompanied by a certificate of existence, or a document of similar import from  
9430 the state or country of incorporation as evidence that the foreign corporation is in existence or  
9431 has authority to transact business under the laws of the state or country in which it is  
9432 organized.

9433 (3) The name is registered for the applicant upon the effective date of the application,  
9434 and the initial registration is effective until the end of the calendar year in which it became  
9435 effective.

9436 (4) A foreign corporation that has in effect a registration of its corporate name as  
9437 permitted by Subsection (1) may renew the registration for the following year by delivering to

9438 the division for filing a renewal application for registration, which complies with the  
9439 requirements of Subsection (2), between October 1 and December 31 of the preceding year.  
9440 When filed, the renewal application for registration renews the registration for the following  
9441 calendar year.

9442 (5) A foreign corporation that has in effect registration of its corporate name may  
9443 apply for authority to transact business in this state under the registered name in accordance  
9444 with the procedure set forth in this part or it may assign the registration to another foreign  
9445 corporation by delivering to the division for filing an assignment of the registration that states  
9446 the registered name, the name of the assigning foreign corporation, and the name of the  
9447 assignee, concurrently with the delivery to the division for filing of the assignee's application  
9448 for registration of the name. The assignee's application [~~must~~] shall meet the requirements of  
9449 this part.

9450 (6) (a) A foreign corporation that has in effect registration of its corporate name may  
9451 terminate the registration at any time by delivering to the division for filing a statement of  
9452 termination setting forth the corporate name and stating that the registration is terminated.

9453 (b) A registration automatically terminates upon the filing of an application for  
9454 authority to transact business in this state under the registered name.

9455 (7) The registration of a corporate name under Subsection (1) constitutes authority by  
9456 the division to file an application meeting the requirements of this part for authority to transact  
9457 business in this state under the registered name, but the authorization is subject to the  
9458 limitations applicable to corporate names as set forth in Section 16-10a-403.

9459 Section 299. Section **16-10a-1510** is amended to read:

9460 **16-10a-1510. Resignation of registered agent of foreign corporation.**

9461 (1) The registered agent of a foreign corporation authorized to transact business in this  
9462 state may resign the agency appointment by delivering to the division for filing a statement of  
9463 resignation, which [~~must~~] shall be signed by the resigning registered agent and accompanied  
9464 by two exact or conformed copies of the statement of resignation. The statement of resignation  
9465 may include a statement that the registered office is also discontinued. The statement of

9466 resignation filed by the registered agent shall include a declaration that notice of the  
9467 resignation has been given to the corporation.

9468 (2) After filing the statement of resignation, the division shall deliver one copy of the  
9469 resignation to the registered office of the foreign corporation and the other copy to its principal  
9470 office.

9471 (3) The agency appointment terminates, and the registered office discontinues if so  
9472 provided, on the 31st day after the filing date of the statement of resignation.

9473 Section 300. Section **16-10a-1533** is amended to read:

9474 **16-10a-1533. Domestication of foreign corporations.**

9475 (1) (a) Any foreign corporation may become a domestic corporation by delivering to  
9476 the division for filing articles of domestication meeting the requirements of Subsection (2) if  
9477 the board of directors of the corporation adopts, and its shareholders approve, the  
9478 domestication.

9479 (b) The adoption and approval of the domestication shall be in accordance with the  
9480 consent requirements of Section 16-10a-1003 for amending articles of incorporation.

9481 (2) (a) The articles of domestication shall meet the requirements applicable to articles  
9482 of incorporation set forth in Sections 16-10a-120 and 16-10a-202, except that:

9483 (i) the articles of domestication need not name, or be signed by, the incorporators of  
9484 the foreign corporation; and

9485 (ii) any reference to the corporation's registered office, registered agent, or directors  
9486 shall be to the registered office and agent in Utah, and the directors then in office at the time  
9487 of filing the articles of domestication.

9488 (b) The articles of domestication shall set forth:

9489 (i) the date on which and jurisdiction where the corporation was first formed,  
9490 incorporated, or otherwise came into being;

9491 (ii) the name of the corporation immediately prior to the filing of the articles of  
9492 domestication;

9493 (iii) any jurisdiction that constituted the seat, location of incorporation, principal place

9494 of business, or central administration of the corporation immediately prior to the filing of the  
9495 articles of domestication; and

9496 (iv) a statement that the articles of domestication were adopted by the corporation's  
9497 board of directors and approved by its shareholders.

9498 (3) (a) Upon the filing of articles of domestication with the division, the corporation  
9499 shall be domesticated in this state, shall thereafter be subject to all of the provisions of this  
9500 chapter, and shall continue as if it had been incorporated under this chapter.

9501 (b) Notwithstanding any other provisions of this chapter, the existence of the  
9502 corporation shall be considered to have commenced on the date the corporation commenced  
9503 its existence in the jurisdiction in which the corporation was first formed, incorporated, or  
9504 otherwise came into being.

9505 (4) The articles of domestication, upon filing with the division, shall become the  
9506 articles of incorporation of the corporation, and shall be subject to amendments or restatement  
9507 the same as any other articles of incorporation under this chapter.

9508 (5) The domestication of any corporation in this state [~~shall not~~] may not be  
9509 considered to affect any obligation or liability of the corporation incurred prior to its  
9510 domestication.

9511 (6) The filing of the articles of domestication [~~shall not~~] does not affect the choice of  
9512 law applicable to the corporation, except that from the date the articles of domestication are  
9513 filed, the law of Utah, including the provisions of this chapter, shall apply to the corporation to  
9514 the same extent as if the corporation had been incorporated as a corporation of this state on  
9515 that date.

9516 Section 301. Section **16-10a-1607** is amended to read:

9517 **16-10a-1607. Annual report for division.**

9518 (1) Each domestic corporation, and each foreign corporation authorized to transact  
9519 business in this state, shall deliver to the division for filing an annual report on a form  
9520 provided by the division that sets forth:

9521 (a) the corporate name of the domestic or foreign corporation and any assumed

9522 corporate name of the foreign corporation;

9523 (b) the jurisdiction under whose law it is incorporated;

9524 (c) the information required by Subsection 16-17-203(1);

9525 (d) the street address of its principal office, wherever located; and

9526 (e) the names of its principal officers.

9527 (2) The division shall deliver a copy of the prescribed form of annual report to each  
9528 domestic corporation and each foreign corporation authorized to transact business in this state.

9529 (3) Information in the annual report [~~must~~] shall be current as of the date the annual  
9530 report is executed on behalf of the corporation.

9531 (4) The annual report of a domestic or foreign corporation shall be delivered annually  
9532 to the division no later than the end of the second calendar month following the calendar  
9533 month in which the report form is mailed by the division. Proof to the satisfaction of the  
9534 division that the corporation has mailed an annual report form is considered in compliance  
9535 with this subsection.

9536 (5) If an annual report contains the information required by this section, the division  
9537 shall file it. If a report does not contain the information required by this section, the division  
9538 shall promptly notify the reporting domestic or foreign corporation in writing and return the  
9539 report to it for correction. If the report was otherwise timely filed and is corrected to contain  
9540 the information required by this section and delivered to the division within 30 days after the  
9541 effective date of the notice of rejection, the annual report is considered to be timely filed.

9542 (6) The fact that an individual's name is signed on an annual report form is prima facie  
9543 evidence for division purposes that the individual is authorized to certify the report on behalf  
9544 of the corporation.

9545 (7) The annual report form provided by the division may be designed to provide a  
9546 simplified certification by the corporation if no changes have been made in the required  
9547 information from the last preceding report filed.

9548 (8) A domestic or foreign corporation may, but may not be required to, deliver to the  
9549 division for filing an amendment to its annual report reflecting any change in the information

9550 contained in its annual report as last amended.

9551 Section 302. Section **16-11-6** is amended to read:

9552 **16-11-6. Purpose of professional corporation -- Power to own property and**  
9553 **invest funds.**

9554 A professional corporation may be organized pursuant to the provisions of this act only  
9555 for the purpose of rendering one specific type of professional service and services ancillary  
9556 thereto and [~~shall not~~] may not engage in any business other than rendering the professional  
9557 service which it was organized to render and services ancillary thereto; provided, however,  
9558 that a professional corporation may own real and personal property necessary or appropriate  
9559 for rendering the type of professional service it was organized to render and may invest its  
9560 funds in real estate, mortgages, stocks, bonds and any other type of investments.

9561 Section 303. Section **16-11-8** is amended to read:

9562 **16-11-8. Officer, director, or shareholder [~~must~~] shall be licensed professional --**  
9563 **Nonlicensed person as secretary or treasurer.**

9564 (1) (a) Except as provided in Subsection (1)(b), a person may not be an officer,  
9565 director, or shareholder of a professional corporation unless that person is:

9566 (i) an individual licensed to render the same specific professional services as those for  
9567 which the corporation is organized; or

9568 (ii) qualified to be an officer, director, or shareholder under the applicable licensing  
9569 act for the profession for which the corporation is organized.

9570 (b) Notwithstanding Subsection (1)(a), a nonlicensed person may serve as secretary or  
9571 treasurer of the professional corporation.

9572 (2) For purposes of Subsection (1), professional services are considered the same  
9573 specific professional services as those for which the corporation is organized if:

9574 (a) the corporation is organized to provide services described in:

9575 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

9576 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

9577 (b) the officer, director, or shareholder is licensed under either of the chapters listed in

9578 Subsection (2)(a).

9579 Section 304. Section **16-11-15** is amended to read:

9580 **16-11-15. Incorporation under Utah Revised Business Corporation Act**  
9581 **permitted -- Existing corporations may come under Professional Corporation Act.**

9582 This act [~~shall not~~] does not preclude incorporation by professional persons under Title  
9583 16, Chapter 10a, Utah Revised Business Corporation Act, where such persons would be  
9584 permitted to organize a corporation and perform professional services by means of such  
9585 corporation in the absence of this act. This act [~~shall not~~] does not apply to any corporation  
9586 organized by such persons prior to the passage of this act, but any such persons or any such  
9587 corporation may bring themselves and such corporation within the provisions of this act by  
9588 amending the articles of incorporation in such a manner as to be consistent with all of the  
9589 provisions of this act and by affirmatively stating in the amended articles of incorporation that  
9590 the shareholders have elected to bring the corporation within the provisions of this act.

9591 Section 305. Section **16-11-16** is amended to read:

9592 **16-11-16. Corporate name.**

9593 (1) The name of each professional corporation as set forth in its articles of  
9594 incorporation:

9595 (a) shall contain the terms:

9596 (i) "professional corporation"; or

9597 (ii) "P.C.";

9598 (b) may not contain the words:

9599 (i) "incorporated"; or

9600 (ii) "inc.";

9601 (c) may not contain language stating or implying that the professional corporation is  
9602 organized for a purpose other than that permitted by:

9603 (i) Section 16-11-6; and

9604 (ii) the professional corporation's articles of incorporation;

9605 (d) without the written consent of the United States Olympic Committee, may not

9606 contain the words:

9607 (i) "Olympic";

9608 (ii) "Olympiad"; or

9609 (iii) "Citius Altius Fortius"; and

9610 (e) without the written consent of the Division of Consumer Protection in accordance  
9611 with Section 13-34-114, may not contain the words:

9612 (i) "university";

9613 (ii) "college"; or

9614 (iii) "institute."

9615 (2) The professional corporation may not imply by any word in the name that it is an  
9616 agency of the state or of any of its political subdivisions.

9617 (3) A person, other than a professional corporation formed or registered under this  
9618 chapter, may not use in its name in this state any of the terms:

9619 (a) "professional corporation"; or

9620 (b) "P.C."

9621 (4) Except as authorized by Subsection (5), the name of the professional corporation  
9622 [~~must~~] shall be distinguishable, as defined in Subsection (6), upon the records of the division  
9623 from:

9624 (a) the name of any domestic corporation incorporated in or foreign corporation  
9625 authorized to transact business in this state;

9626 (b) the name of any domestic or foreign nonprofit corporation incorporated or  
9627 authorized to transact business in this state;

9628 (c) the name of any domestic or foreign limited liability company formed or  
9629 authorized to transact business in this state;

9630 (d) the name of any limited partnership formed or authorized to transact business in  
9631 this state;

9632 (e) any name reserved or registered with the division for a corporation, limited liability  
9633 company, or general or limited partnership, under the laws of this state; and

9634 (f) any business name, fictitious name, assumed name, trademark, or service mark  
9635 registered by the division.

9636 (5) (a) A professional corporation may apply to the division for authorization to file its  
9637 articles of incorporation under, or to register or reserve, a name that is not distinguishable  
9638 upon its records from one or more of the names described in Subsection (4).

9639 (b) The division shall approve the application filed under Subsection (5)(a) if:

9640 (i) the other person whose name is not distinguishable from the name under which the  
9641 applicant desires to file, or which the applicant desires to register or reserve:

9642 (A) consents to the filing, registration, or reservation in writing; and

9643 (B) submits an undertaking in a form satisfactory to the division to change its name to  
9644 a name that is distinguishable from the name of the applicant; or

9645 (ii) the applicant delivers to the division a certified copy of the final judgment of a  
9646 court of competent jurisdiction establishing the applicant's right to make the requested filing  
9647 in this state under the name applied for.

9648 (6) (a) A name is distinguishable from other names, trademarks, and service marks  
9649 registered with the division if it:

9650 (i) contains one or more different letters or numerals from other names upon the  
9651 division's records; or

9652 (ii) has a different sequence of letter or numerals from the other names on the  
9653 division's records.

9654 (b) The following differences are not distinguishable:

9655 (i) the words or abbreviations of the words:

9656 (A) "corporation";

9657 (B) "incorporated";

9658 (C) "company";

9659 (D) "limited partnership";

9660 (E) "limited";

9661 (F) "L.P.";

- 9662 (G) "Ltd.";
- 9663 (H) "limited liability company";
- 9664 (I) "limited company";
- 9665 (J) "L.C."; or
- 9666 (K) "L.L.C.";
- 9667 (ii) the presence or absence of the words or symbols of the words "the," "and," "a," or
- 9668 "plus";
- 9669 (iii) differences in punctuation and special characters;
- 9670 (iv) differences in capitalization; or
- 9671 (v) differences in abbreviations.

9672 (7) The director of the division shall have the power and authority reasonably  
9673 necessary to interpret and efficiently administer this section and to perform the duties imposed  
9674 upon the division by this section.

9675 Section 306. Section **16-12-5** is amended to read:

9676 **16-12-5. Limited liability of shareholders or beneficiaries.**

9677 The shareholders or beneficiaries of a real estate investment trust [~~shall not~~] are not, as  
9678 such, [~~be~~] personally liable for obligations of the real estate investment trust, and shall be  
9679 under no obligation to the trust or its creditors with respect to such shares or interest other than  
9680 the obligation to pay the trust the full amount of consideration for which such shares were  
9681 issued or to be issued.

9682 Section 307. Section **16-12-6** is amended to read:

9683 **16-12-6. Trustee governed by declaration of trust -- Liability.**

9684 A trustee of a real estate investment trust shall be governed by all the provisions of the  
9685 declaration of trust and [~~shall not be~~] is not liable for any claims or damages that may result  
9686 from his acts in the discharge of any duty imposed or power conferred upon him by the trust,  
9687 if he exercises ordinary care, and acts in good faith, but shall be liable for his own willful  
9688 misfeasance or malfeasance. Persons dealing with the trust through the trustees or agents shall  
9689 look to the trust estate for performance of obligations.

9690 Section 308. Section **16-13-4** is amended to read:

9691 **16-13-4. General powers of business development corporation.**

9692 In furtherance of the purposes of a development corporation, and in addition to the  
9693 powers conferred on corporations by Title 16, Chapter 10a, Utah Revised Business  
9694 Corporation Act, such corporation, subject to the restrictions and limitations contained in this  
9695 act, shall have the following powers:

9696 [~~(a)~~] (1) To borrow money from lenders, and otherwise incur indebtedness for any of  
9697 its purposes; to issue its bonds, debentures, notes, or other evidences of indebtedness whether  
9698 secured or unsecured therefor; and to secure the same by mortgage, pledge, deed of trust, or  
9699 other lien on its property, franchises, rights and privileges of every kind and nature or any part  
9700 thereof.

9701 [~~(b)~~] (2) To lend money to, and to guarantee, indorse, or act as surety on the bonds,  
9702 notes, contracts, or other obligations of, or otherwise assist financially, any person, firm,  
9703 corporation, or association, and to establish and regulate the terms and conditions with respect  
9704 to any such loans or financial assistance and the charges for interest and service connected  
9705 therewith; provided, however, that the corporation [~~shall not~~] may not approve any application  
9706 for a loan unless and until the applicant shall have shown that the applicant has applied for the  
9707 loan through ordinary financial channels and that the loan has been refused by at least one  
9708 financial institution doing business in this state and, in the ordinary course of its business,  
9709 granting loans similar in amount and kind to the requested loan.

9710 [~~(c)~~] (3) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey,  
9711 mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as its board  
9712 of directors may deem advisable, real and personal property, together with such rights and  
9713 privileges as may be incidental and appurtenant thereto and the use thereof, including, but not  
9714 restricted to, any real or personal property acquired by such corporation from time to time in  
9715 the satisfaction of debts or enforcement of obligations.

9716 [~~(d)~~] (4) To acquire the good will, business, rights, real and personal property, and  
9717 other assets, or any part thereof, of such persons, firms, corporations, joint stock companies,

9718 associations, or trusts as may be in furtherance of the corporate purposes provided herein, and  
 9719 to assume, undertake, guarantee, or pay the obligations, debts, and liabilities of any such  
 9720 person, firm, corporation, joint stock company, association, or trust; to acquire improved or  
 9721 unimproved real estate for the purpose of constructing industrial plants or other business  
 9722 establishments thereon or for the purpose of disposing of such real estate to others for the  
 9723 construction of industrial plants or other business establishments, and, in furtherance of the  
 9724 corporate purposes, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell,  
 9725 lease, or otherwise dispose of industrial plants or business establishments.

9726 [~~(e)~~] (5) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge,  
 9727 or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and  
 9728 evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock  
 9729 company, association, or trust, and while the owner or holder thereof, to exercise all the rights,  
 9730 powers, and privileges of ownership, including the right to vote thereon, but nothing herein  
 9731 provided shall authorize the holding of securities of or otherwise engaging directly or  
 9732 indirectly in a business where such holding of securities or engaging in business is not  
 9733 authorized for corporations by general law.

9734 [~~(f)~~] (6) To cooperate with and avail itself of the facilities of state departments and  
 9735 other government agencies; and to cooperate with and assist, and otherwise encourage, local  
 9736 organizations in the various communities in the state in the promotion, assistance, and  
 9737 development of the business prosperity and economic welfare of such communities and of the  
 9738 state.

9739 Section 309. Section **16-13-5** is amended to read:

9740 **16-13-5. Bonds or securities, capital stock of development corporations --**  
 9741 **Authority to purchase, hold, or dispose of -- Rights of holders -- Rights of financial**  
 9742 **institutions.**

9743 (1) All persons, firms, partnerships, associations, trusts and domestic and foreign  
 9744 corporations organized or authorized to do business in this state, including, without implied  
 9745 limitation, all financial institutions, public utility corporations and insurance corporations, are

9746 hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or  
9747 otherwise dispose of any bonds, securities or other evidences of indebtedness created by a  
9748 development corporation, and to exercise all the rights, powers and privileges of ownership  
9749 thereof, all without the approval of any regulatory authority of the state.

9750 (2) All persons, firms, partnerships, associations, trusts, domestic and foreign  
9751 corporations organized or authorized to do business in this state, including without implied  
9752 limitation all public utility corporations and insurance corporations, other than financial  
9753 institutions, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage,  
9754 pledge, or otherwise dispose of any of the shares of the capital stock of a development  
9755 corporation, and while owners of said stock to exercise all the rights, powers and privileges of  
9756 ownership, including the right to vote thereon, all without the approval of any regulatory  
9757 authority of the state.

9758 (3) All financial institutions are hereby authorized to become lenders to development  
9759 corporations and to make loans to the corporations as provided herein, without the approval of  
9760 any regulatory authority of the state.

9761 (4) A financial institution is authorized to acquire, purchase, hold, sell, assign,  
9762 transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of  
9763 indebtedness created by the corporation in accordance with its provisions for the call of loans,  
9764 and any of the shares of the capital stock of the corporation, and while owners thereof, to  
9765 exercise all the rights, powers and privileges of ownership, including the right to vote, all  
9766 without approval of any regulatory authority of the state; provided, that the amount of the  
9767 capital stock of the corporation which may be acquired by any lender pursuant to the authority  
9768 granted herein ~~shall not~~ may not exceed 10% of the loan limit of such lender. The amount of  
9769 capital stock of the corporation which any lender is authorized to acquire pursuant to the  
9770 authority granted herein is in addition to the amount of capital stock in corporations which  
9771 such lender may otherwise be authorized to acquire.

9772 Section 310. Section **16-13-9** is amended to read:

9773 **16-13-9. Requirement before commencing business -- Cash consideration for**

9774 **shares -- Minimum stated capital.**

9775 A development corporation incorporated after July 1, 1979, [~~shall not~~] may not transact  
9776 any business or incur any indebtedness, except as is incidental to its organization or to obtain  
9777 subscriptions to or payment for its shares, until there has been paid in for the issuance of  
9778 shares consideration in cash of at least \$300,000. A development corporation shall have a  
9779 stated capital of not less than \$300,000.

9780 Section 311. Section **16-13-11** is amended to read:

9781 **16-13-11. Designation of depository.**

9782 A development corporation [~~shall not~~] may not deposit any of its funds in any banking  
9783 institution unless such institution has been designated as a depository by a vote of a majority  
9784 of the directors present at an authorized meeting of the board of directors, exclusive of any  
9785 director who is an officer or director of the depository so designated. A development  
9786 corporation [~~shall not~~] may not receive money on deposit.

9787 Section 312. Section **16-16-111** is amended to read:

9788 **16-16-111. Name.**

9789 (1) Use of the term "cooperative" or its abbreviation under this chapter is not a  
9790 violation of the provisions restricting the use of the term under any other law of this state.

9791 (2) Notwithstanding Section 48-2a-102, the name of a limited cooperative association  
9792 [~~must~~] shall contain the words "limited cooperative association" or "limited cooperative" or  
9793 the abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative"  
9794 may be abbreviated as "Co-op" or "Coop". "Association" may be abbreviated as "Assoc." or  
9795 "Assn.". Use of the term "cooperative" or its abbreviation as permitted by this chapter is not a  
9796 violation of the provisions restricting the use of the term under any other law of this state. A  
9797 limited cooperative association or a member may enforce the restrictions on the use of the term  
9798 "cooperative" under this chapter and any other law of this state. A limited cooperative  
9799 association or a member may enforce the restrictions on the use of the term "cooperative"  
9800 under any other law of this state.

9801 (3) Except as otherwise provided in Subsection (4), a limited cooperative association

9802 may use only a name that is available. A name is available if it is distinguishable in the  
9803 records of the division from:

9804 (a) the name of any entity organized or authorized to transact business in this state;

9805 (b) a name reserved under Section 16-16-112; and

9806 (c) an alternative name approved for a foreign cooperative authorized to transact  
9807 business in this state.

9808 (4) A limited cooperative association may apply to the division for authorization to  
9809 use a name that is not available. The division shall authorize use of the name if:

9810 (a) the person with ownership rights to use the name consents in a record to the use  
9811 and applies in a form satisfactory to the division to change the name used or reserved to a  
9812 name that is distinguishable upon the records of the division from the name applied for; or

9813 (b) the applicant delivers to the division a certified copy of the final judgment of a  
9814 court establishing the applicant's right to use the name in this state.

9815 Section 313. Section **16-16-112** is amended to read:

9816 **16-16-112. Reservation of name.**

9817 (1) A person may reserve the exclusive use of the name of a limited cooperative  
9818 association, including a fictitious name for a foreign cooperative whose name is not available  
9819 under Section 16-16-111, by delivering an application to the division for filing. The  
9820 application [~~must~~] shall set forth the name and address of the applicant and the name proposed  
9821 to be reserved. If the division finds that the name applied for is available under Section  
9822 16-16-111, the division shall reserve the name for the applicant's exclusive use for a  
9823 nonrenewable period of 120 days.

9824 (2) A person that has reserved a name for a limited cooperative association may  
9825 transfer the reservation to another person by delivering to the division a signed notice of the  
9826 transfer which states the name, street address, and, if different, the mailing address of the  
9827 transferee. If the person is an organizer of the association and the name of the association is  
9828 the same as the reserved name, the delivery of articles of organization for filing by the division  
9829 is a transfer by the person to the association.

9830 Section 314. Section **16-16-113** is amended to read:

9831 **16-16-113. Effect of organic rules.**

9832 (1) The relations between a limited cooperative association and its members are  
9833 consensual. Unless required, limited, or prohibited by this chapter, the organic rules may  
9834 provide for any matter concerning the relations among the members of the association and  
9835 between the members and the association, the activities of the association, and the conduct of  
9836 its activities.

9837 (2) The matters referred to in Subsections (2)(a) through (i) may be varied only in the  
9838 articles of organization. The articles may:

9839 (a) state a term of existence for the association under Subsection 16-16-105(3);

9840 (b) limit or eliminate the acceptance of new or additional members by the initial board  
9841 of directors under Subsection 16-16-303(2);

9842 (c) vary the limitations on the obligations and liability of members for association  
9843 obligations under Section 16-16-504;

9844 (d) require a notice of an annual members meeting to state a purpose of the meeting  
9845 under Subsection 16-16-508(2);

9846 (e) vary the board of directors meeting quorum under Subsection 16-16-815(1);

9847 (f) vary the matters the board of directors may consider in making a decision under  
9848 Section 16-16-820;

9849 (g) specify causes of dissolution under Subsection 16-16-1202(1);

9850 (h) delegate amendment of the bylaws to the board of directors pursuant to Subsection  
9851 16-16-405(6);

9852 (i) provide for member approval of asset dispositions under Subsection 16-16-1501;  
9853 and

9854 (j) provide for any matters that may be contained in the organic rules, including those  
9855 under Subsection (3).

9856 (3) The matters referred to in Subsections (3)(a) through (y) may be varied only in the  
9857 organic rules. The organic rules may:

- 9858 (a) require more information to be maintained under Section 16-16-114 or provided to  
9859 members under Subsection 16-16-505(11);
- 9860 (b) provide restrictions on transactions between a member and an association under  
9861 Section 16-16-115;
- 9862 (c) provide for the percentage and manner of voting on amendments to the organic  
9863 rules by district, class, or voting group under Subsection 16-16-404(1);
- 9864 (d) provide for the percentage vote required to amend the bylaws concerning the  
9865 admission of new members under Subsection 16-16-405(5)(e);
- 9866 (e) provide for terms and conditions to become a member under Section 16-16-502;
- 9867 (f) restrict the manner of conducting members meetings under Subsections  
9868 16-16-506(3) and 16-16-507(5);
- 9869 (g) designate the presiding officer of members meetings under Subsections  
9870 16-16-506(5) and 16-16-507(7);
- 9871 (h) require a statement of purposes in the annual meeting notice under Subsection  
9872 16-16-508(2);
- 9873 (i) increase quorum requirements for members meetings under Section 16-16-510 and  
9874 board of directors meetings under Section 16-16-815;
- 9875 (j) allocate voting power among members, including patron members and investor  
9876 members, and provide for the manner of member voting and action as permitted by Sections  
9877 16-16-511 through 16-16-517;
- 9878 (k) authorize investor members and expand or restrict the transferability of members'  
9879 interests to the extent provided in Sections 16-16-602 through 16-16-604;
- 9880 (l) provide for enforcement of a marketing contract under Subsection 16-16-704(1);
- 9881 (m) provide for qualification, election, terms, removal, filling vacancies, and member  
9882 approval for compensation of directors in accordance with Sections 16-16-803 through  
9883 16-16-805, 16-16-807, 16-16-809, and 16-16-810;
- 9884 (n) restrict the manner of conducting board meetings and taking action without a  
9885 meeting under Sections 16-16-811 and 16-16-812;

- 9886 (o) provide for frequency, location, notice and waivers of notice for board meetings  
9887 under Sections 16-16-813 and 16-16-814;
- 9888 (p) increase the percentage of votes necessary for board action under Subsection  
9889 16-16-816(2);
- 9890 (q) provide for the creation of committees of the board of directors and matters related  
9891 to the committees in accordance with Section 16-16-817;
- 9892 (r) provide for officers and their appointment, designation, and authority under  
9893 Section 16-16-822;
- 9894 (s) provide for forms and values of contributions under Section 16-16-1002;
- 9895 (t) provide for remedies for failure to make a contribution under Subsection  
9896 16-16-1003(2);
- 9897 (u) provide for the allocation of profits and losses of the association, distributions, and  
9898 the redemption or repurchase of distributed property other than money in accordance with  
9899 Sections 16-16-1004 through 16-16-1007;
- 9900 (v) specify when a member's dissociation is wrongful and the liability incurred by the  
9901 dissociating member for damage to the association under Subsections 16-16-1101(2) and (3);
- 9902 (w) provide the personal representative, or other legal representative of, a deceased  
9903 member or a member adjudged incompetent with additional rights under Section 16-16-1103;
- 9904 (x) increase the percentage of votes required for board of director approval of:
- 9905 (i) a resolution to dissolve under Subsection 16-16-1205(1)(a);
- 9906 (ii) a proposed amendment to the organic rules under Subsection 16-16-402(1)(a);
- 9907 (iii) a plan of conversion under Subsection 16-16-1603(1);
- 9908 (iv) a plan of merger under Subsection 16-16-1607(1); and
- 9909 (v) a proposed disposition of assets under Subsection 16-16-1503(1); and
- 9910 (y) vary the percentage of votes required for members' approval of:
- 9911 (i) a resolution to dissolve under Section 16-16-1205;
- 9912 (ii) an amendment to the organic rules under Section 16-16-405;
- 9913 (iii) a plan of conversion under Section 16-16-1603;

9914 (iv) a plan of merger under Section 16-16-1608; and  
9915 (v) a disposition of assets under Section 16-16-1504.  
9916 (4) The organic rules [~~must~~] shall address members' contributions pursuant to Section  
9917 16-16-1001.

9918 Section 315. Section **16-16-114** is amended to read:

9919 **16-16-114. Required information.**

9920 (1) Subject to Subsection (2), a limited cooperative association shall maintain in a  
9921 record available at its principal office:

9922 (a) a list containing the name, last known street address and, if different, mailing  
9923 address, and term of office of each director and officer;

9924 (b) the initial articles of organization and all amendments to and restatements of the  
9925 articles, together with a signed copy of any power of attorney under which any article,  
9926 amendment, or restatement has been signed;

9927 (c) the initial bylaws and all amendments to and restatements of the bylaws;

9928 (d) all filed articles of merger and statements of conversion;

9929 (e) all financial statements of the association for the six most recent years;

9930 (f) the six most recent annual reports delivered by the association to the division;

9931 (g) the minutes of members meetings for the six most recent years;

9932 (h) evidence of all actions taken by members without a meeting for the six most recent  
9933 years;

9934 (i) a list containing:

9935 (i) the name, in alphabetical order, and last known street address and, if different,  
9936 mailing address of each patron member and each investor member; and

9937 (ii) if the association has districts or classes of members, information from which each  
9938 current member in a district or class may be identified;

9939 (j) the federal income tax returns, any state and local income tax returns, and any tax  
9940 reports of the association for the six most recent years;

9941 (k) accounting records maintained by the association in the ordinary course of its

- 9942 operations for the six most recent years;
- 9943 (l) the minutes of directors meetings for the six most recent years;
- 9944 (m) evidence of all actions taken by directors without a meeting for the six most recent
- 9945 years;
- 9946 (n) the amount of money contributed and agreed to be contributed by each member;
- 9947 (o) a description and statement of the agreed value of contributions other than money
- 9948 made and agreed to be made by each member;
- 9949 (p) the times at which, or events on the happening of which, any additional
- 9950 contribution is to be made by each member;
- 9951 (q) for each member, a description and statement of the member's interest or
- 9952 information from which the description and statement can be derived; and
- 9953 (r) all communications concerning the association made in a record to all members, or
- 9954 to all members in a district or class, for the six most recent years.

9955 (2) If a limited cooperative association has existed for less than the period for which

9956 records ~~[must]~~ are required to be maintained under Subsection (1), the period records ~~[must]~~

9957 shall be kept is the period of the association's existence.

9958 (3) The organic rules may require that more information be maintained.

9959 Section 316. Section **16-16-117** is amended to read:

9960 **16-16-117. Designated office and agent for service of process.**

9961 (1) A limited cooperative association, or a foreign cooperative that has a certificate of

9962 authority under Section 16-16-1404, shall designate and continuously maintain in this state:

9963 (a) an office, as its designated office, which need not be a place of the association's or

9964 foreign cooperative's activity in this state; and

9965 (b) an agent for service of process at the designated office.

9966 (2) An agent for service of process of a limited cooperative association or foreign

9967 cooperative ~~[must]~~ shall be an individual who is a resident of this state or an entity that is

9968 authorized to do business in this state.

9969 Section 317. Section **16-16-118** is amended to read:

9970           **16-16-118. Change of designated office or agent for service of process.**

9971           (1) Except as otherwise provided in Subsection 16-16-207(5), to change its designated  
9972 office, its agent for service of process, or the street address or, if different, mailing address of  
9973 its principal office, a limited cooperative association [~~must~~] shall deliver to the division for  
9974 filing a statement of change containing:

9975           (a) the name of the limited cooperative association;

9976           (b) the street address and, if different, mailing address of its designated office;

9977           (c) if the designated office is to be changed, the street address and, if different, mailing  
9978 address of the new designated office;

9979           (d) the name of its agent for service of process; and

9980           (e) if the agent for service of process is to be changed, the name of the new agent.

9981           (2) Except as otherwise provided in Subsection 16-16-207(5), to change its agent for  
9982 service of process, the address of its designated office, or the street address or, if different,  
9983 mailing address of its principal office, a foreign cooperative shall deliver to the division for  
9984 filing a statement of change containing:

9985           (a) the name of the foreign cooperative;

9986           (b) the name, street address and, if different, mailing address of its designated office;

9987           (c) if the current agent for service of process or an address of the designated office is  
9988 to be changed, the new information;

9989           (d) the street address and, if different, mailing address of its principal office; and

9990           (e) if the street address or, if different, the mailing address of its principal office is to  
9991 be changed, the street address and, if different, the mailing address of the new principal office.

9992           (3) Except as otherwise provided in Section 16-16-204, a statement of change is  
9993 effective when filed by the division.

9994           Section 318. Section **16-16-119** is amended to read:

9995           **16-16-119. Resignation of agent for service of process.**

9996           (1) To resign as an agent for service of process of a limited cooperative association or  
9997 foreign cooperative, the agent [~~must~~] shall deliver to the division for filing a statement of

9998 resignation containing the name of the agent and the name of the association or foreign  
9999 cooperative.

10000 (2) After receiving a statement of resignation under Subsection (1), the division shall  
10001 file it and mail or otherwise provide or deliver a copy to the limited cooperative association or  
10002 foreign cooperative at its principal office.

10003 (3) An agency for service of process of a limited cooperative association or foreign  
10004 cooperative terminates on the earlier of:

10005 (a) the 31st day after the division files a statement of resignation under Subsection (2);  
10006 or

10007 (b) when a record designating a new agent for service of process is delivered to the  
10008 division for filing on behalf of the association or foreign cooperative and becomes effective.

10009 Section 319. Section **16-16-201** is amended to read:

10010 **16-16-201. Signing of records delivered for filing to division.**

10011 (1) A record delivered to the division for filing pursuant to this chapter [~~must~~] shall be  
10012 signed as follows:

10013 (a) The initial articles of organization [~~must~~] shall be signed by at least one organizer.

10014 (b) A statement of cancellation under Subsection 16-16-302(4) [~~must~~] shall be signed  
10015 by at least one organizer.

10016 (c) Except as otherwise provided in Subsection (1)(d), a record signed on behalf of an  
10017 existing limited cooperative association [~~must~~] shall be signed by an officer.

10018 (d) A record filed on behalf of a dissolved association [~~must~~] shall be signed by a  
10019 person winding up activities under Section 16-16-1206 or a person appointed under Section  
10020 16-16-1206 to wind up those activities.

10021 (e) Any other record [~~must~~] shall be signed by the person on whose behalf the record  
10022 is delivered to the division.

10023 (2) Any record to be signed under this chapter may be signed by an authorized agent.  
10024 Section 320. Section **16-16-203** is amended to read:

10025 **16-16-203. Delivery to and filing of records by division -- Effective time and**

10026 **date.**

10027 (1) A record authorized or required by this chapter to be delivered to the division for  
10028 filing [~~must~~] shall be captioned to describe the record's purpose, be in a medium and format  
10029 permitted by the division, and be delivered to the division. If the filing fees have been paid,  
10030 and unless the division determines that the record does not comply with the filing  
10031 requirements of this chapter, the division shall file the record.

10032 (2) The division, upon request and payment of the required fee, shall furnish a  
10033 certified copy of any record filed by the division under this chapter to the person making the  
10034 request.

10035 (3) Except as otherwise provided in Sections 16-16-118 and 16-16-204, a record  
10036 delivered to the division for filing under this chapter may specify an effective time and a  
10037 delayed effective date that may include an effective time on that date. Except as otherwise  
10038 provided in Sections 16-16-118 and 16-16-204, a record filed by the division under this  
10039 chapter is effective:

10040 (a) if the record does not specify an effective time and does not specify a delayed  
10041 effective date, on the date and at the time the record is filed as evidenced by the division's  
10042 endorsement of the date and time on the record;

10043 (b) if the record specifies an effective time but not a delayed effective date, on the date  
10044 the record is filed at the time specified in the record;

10045 (c) if the record specifies a delayed effective date but not an effective time, at 12:01  
10046 a.m. on the earlier of:

10047 (i) the specified date; or

10048 (ii) the 90th day after the record is filed; or

10049 (d) if the record specifies an effective time and a delayed effective date, at the  
10050 specified time on the earlier of:

10051 (i) the specified date; or

10052 (ii) the 90th day after the record is filed.

10053 Section 321. Section **16-16-204** is amended to read:

10054           **16-16-204. Correcting filed record.**

10055           (1) A limited cooperative association or foreign cooperative may deliver to the  
10056 division for filing a statement of correction to correct a record previously delivered by the  
10057 association or foreign cooperative to the division and filed by the division if, at the time of  
10058 filing, the record contained inaccurate information or was defectively signed.

10059           (2) A statement of correction may not state a delayed effective date and [~~must~~] shall:

10060           (a) describe the record to be corrected, including its filing date, or have attached a  
10061 copy of the record as filed;

10062           (b) specify the inaccurate information and the reason it is inaccurate or the manner in  
10063 which the signing was defective; and

10064           (c) correct the inaccurate information or defective signature.

10065           (3) When filed by the division, a statement of correction is effective:

10066           (a) when filed as to persons relying on the inaccurate information or defective  
10067 signature before its correction and adversely affected by the correction; and

10068           (b) as to all other persons, retroactively as of the effective date and time of the record  
10069 the statement corrects.

10070           Section 322. Section **16-16-207** is amended to read:

10071           **16-16-207. Annual report for division.**

10072           (1) A limited cooperative association or foreign cooperative authorized to transact  
10073 business in this state shall deliver to the division for filing an annual report that states:

10074           (a) the name of the association or foreign cooperative;

10075           (b) the street address and, if different, mailing address of the association's or foreign  
10076 cooperative's designated office and the name of its agent for service of process at the  
10077 designated office;

10078           (c) the street address and, if different, mailing address of the association's or foreign  
10079 cooperative's principal office; and

10080           (d) in the case of a foreign cooperative, the state or other jurisdiction under whose law  
10081 the foreign cooperative is formed and any alternative name adopted under Section 16-16-1405.

10082           (2) Information in an annual report [must] shall be current as of the date the report is  
10083 delivered to the division.

10084           (3) The first annual report [must] shall be delivered to the division between January 1  
10085 and April 1 of the year following the calendar year in which the limited cooperative  
10086 association is formed or the foreign cooperative is authorized to transact business in this state.  
10087 For subsequent years, an annual report [must] shall be delivered to the division during the  
10088 month in which falls the anniversary of the limited cooperative association's organization or  
10089 the foreign cooperative's authorization to transact business.

10090           (4) If an annual report does not contain the information required by Subsection (1), the  
10091 division shall promptly notify the reporting limited cooperative association or foreign  
10092 cooperative and return the report for correction. If the report is corrected to contain the  
10093 information required by Subsection (1) and delivered to the division not later than 30 days  
10094 after the date of the notice from the division, it is timely delivered.

10095           (5) If a filed annual report contains an address of the designated office, name of the  
10096 agent for service of process, or address of the principal office which differs from the  
10097 information shown in the records of the division immediately before the filing, the differing  
10098 information in the annual report is considered a statement of change.

10099           (6) If a limited cooperative association fails to deliver an annual report under this  
10100 section, the division may proceed under Section 16-16-1211 to dissolve the association  
10101 administratively.

10102           (7) If a foreign cooperative fails to deliver an annual report under this section, the  
10103 division may revoke the certificate of authority of the cooperative.

10104           Section 323. Section **16-16-301** is amended to read:

10105           **16-16-301. Organizers.**

10106           A limited cooperative association [must] shall be organized by one or more organizers.

10107           Section 324. Section **16-16-302** is amended to read:

10108           **16-16-302. Formation of limited cooperative association -- Articles of**  
10109 **organization.**

10110 (1) To form a limited cooperative association, an organizer of the association [must]  
10111 shall deliver articles of organization to the division for filing. The articles [must] shall state:

10112 (a) the name of the association;

10113 (b) the purposes for which the association is formed;

10114 (c) the street address and, if different, mailing address of the association's initial  
10115 designated office and the name of the association's initial agent for service of process at the  
10116 designated office;

10117 (d) the street address and, if different, mailing address of the initial principal office;

10118 (e) the name and street address and, if different, mailing address of each organizer;

10119 and

10120 (f) the term for which the association is to exist if other than perpetual.

10121 (2) Subject to Subsection 16-16-113(1), articles of organization may contain any other  
10122 provisions in addition to those required by Subsection (1).

10123 (3) A limited cooperative association is formed after articles of organization that  
10124 substantially comply with Subsection (1) are delivered to the division, are filed, and become  
10125 effective under Subsection 16-16-203(3).

10126 (4) If articles of organization filed by the division state a delayed effective date, a  
10127 limited cooperative association is not formed if, before the articles take effect, an organizer  
10128 signs and delivers to the division for filing a statement of cancellation.

10129 Section 325. Section **16-16-304** is amended to read:

10130 **16-16-304. Bylaws.**

10131 (1) Bylaws [must] shall be in a record and, if not stated in the articles of organization,  
10132 [must] shall include:

10133 (a) a statement of the capital structure of the limited cooperative association,  
10134 including:

10135 (i) the classes or other types of members' interests and relative rights, preferences, and  
10136 restrictions granted to or imposed upon each class or other type of member's interest; and

10137 (ii) the rights to share in profits or distributions of the association;

10138 (b) a statement of the method for admission of members;

10139 (c) a statement designating voting and other governance rights, including which

10140 members have voting power and any restriction on voting power;

10141 (d) a statement that a member's interest is transferable if it is to be transferable and a

10142 statement of the conditions upon which it may be transferred;

10143 (e) a statement concerning the manner in which profits and losses are allocated and

10144 distributions are made among patron members and, if investor members are authorized, the

10145 manner in which profits and losses are allocated and how distributions are made among

10146 investor members and between patron members and investor members;

10147 (f) a statement concerning:

10148 (i) whether persons that are not members but conduct business with the association

10149 may be permitted to share in allocations of profits and losses and receive distributions; and

10150 (ii) the manner in which profits and losses are allocated and distributions are made

10151 with respect to those persons; and

10152 (g) a statement of the number and terms of directors or the method by which the

10153 number and terms are determined.

10154 (2) Subject to Subsection 16-16-113(3) and the articles of organization, bylaws may

10155 contain any other provision for managing and regulating the affairs of the association.

10156 (3) In addition to amendments permitted under Part 4, Amendment of Organic Rules

10157 of Limited Cooperative Association, the initial board of directors may amend the bylaws by a

10158 majority vote of the directors at any time before the admission of members.

10159 Section 326. Section **16-16-402** is amended to read:

10160 **16-16-402. Notice and action on amendment of organic rules.**

10161 (1) Except as provided in Subsections 16-16-401(1) and 16-16-405(6), the organic

10162 rules of a limited cooperative association may be amended only at a members meeting. An

10163 amendment may be proposed by either:

10164 (a) a majority of the board of directors, or a greater percentage if required by the

10165 organic rules; or

10166 (b) one or more petitions signed by at least 10% of the patron members or at least 10%  
10167 of the investor members.

10168 (2) The board of directors shall call a members meeting to consider an amendment  
10169 proposed pursuant to Subsection (1). The meeting ~~[must]~~ shall be held not later than 90 days  
10170 following the proposal of the amendment by the board or receipt of a petition. The board  
10171 ~~[must]~~ shall mail or otherwise transmit or deliver in a record to each member:

10172 (a) the proposed amendment, or a summary of the proposed amendment and a  
10173 statement of the manner in which a copy of the amendment in a record may be reasonably  
10174 obtained by a member;

10175 (b) a recommendation that the members approve the amendment, or if the board  
10176 determines that because of conflict of interest or other special circumstances it should not  
10177 make a favorable recommendation, the basis for that determination;

10178 (c) a statement of any condition of the board's submission of the amendment to the  
10179 members; and

10180 (d) notice of the meeting at which the proposed amendment will be considered, which  
10181 ~~[must]~~ shall be given in the same manner as notice for a special meeting of members.

10182 Section 327. Section **16-16-403** is amended to read:

10183 **16-16-403. Change to amendment of organic rules at meeting.**

10184 (1) A substantive change to a proposed amendment of the organic rules may not be  
10185 made at the members meeting at which a vote on the amendment occurs.

10186 (2) A nonsubstantive change to a proposed amendment of the organic rules may be  
10187 made at the members meeting at which the vote on the amendment occurs and need not be  
10188 separately voted upon by the board of directors.

10189 (3) A vote to adopt a nonsubstantive change to a proposed amendment to the organic  
10190 rules ~~[must]~~ shall be by the same percentage of votes required to pass a proposed amendment.

10191 Section 328. Section **16-16-404** is amended to read:

10192 **16-16-404. Voting by district, class, or voting group.**

10193 (1) This section applies if the organic rules provide for voting by district or class, or if

10194 there is one or more identifiable voting groups that a proposed amendment to the organic rules  
10195 would affect differently from other members with respect to matters identified in Subsections  
10196 16-16-405(5)(a) through (e). Approval of the amendment requires the same percentage of  
10197 votes of the members of that district, class, or voting group required in Sections 16-16-405  
10198 and 16-16-514.

10199 (2) If a proposed amendment to the organic rules would affect members in two or  
10200 more districts or classes entitled to vote separately under Subsection (1) in the same or a  
10201 substantially similar way, the districts or classes affected [~~must~~] shall vote as a single voting  
10202 group unless the organic rules otherwise provide for separate voting.

10203 Section 329. Section **16-16-405** is amended to read:

10204 **16-16-405. Approval of amendment.**

10205 (1) Subject to Section 16-16-404 and Subsections (3) and (4), an amendment to the  
10206 articles of organization [~~must~~] shall be approved by:

10207 (a) at least two-thirds of the voting power of members present at a members meeting  
10208 called under Section 16-16-402; and

10209 (b) if the limited cooperative association has investor members, at least a majority of  
10210 the votes cast by patron members, unless the organic rules require a greater percentage vote by  
10211 patron members.

10212 (2) Subject to Section 16-16-404 and Subsections (3), (4), (5), and (6), an amendment  
10213 to the bylaws [~~must~~] shall be approved by:

10214 (a) at least a majority vote of the voting power of all members present at a members  
10215 meeting called under Section 16-16-402, unless the organic rules require a greater percentage;  
10216 and

10217 (b) if a limited cooperative association has investor members, a majority of the votes  
10218 cast by patron members, unless the organic rules require a larger affirmative vote by patron  
10219 members.

10220 (3) The organic rules may require that the percentage of votes under Subsection (1)(a)  
10221 or (2)(a) be:

- 10222 (a) a different percentage that is not less than a majority of members voting at the  
10223 meeting;
- 10224 (b) measured against the voting power of all members; or
- 10225 (c) a combination of Subsections (3)(a) and (b).
- 10226 (4) Consent in a record by a member [~~must~~] shall be delivered to a limited cooperative  
10227 association before delivery of an amendment to the articles of organization or restated articles  
10228 of organization for filing pursuant to Section 16-16-407, if as a result of the amendment the  
10229 member will have:
- 10230 (a) personal liability for an obligation of the association; or
- 10231 (b) an obligation or liability for an additional contribution.
- 10232 (5) The vote required to amend bylaws [~~must~~] shall satisfy the requirements of  
10233 Subsection (1) if the proposed amendment modifies:
- 10234 (a) the equity capital structure of the limited cooperative association, including the  
10235 rights of the association's members to share in profits or distributions, or the relative rights,  
10236 preferences, and restrictions granted to or imposed upon one or more districts, classes, or  
10237 voting groups of similarly situated members;
- 10238 (b) the transferability of a member's interest;
- 10239 (c) the manner or method of allocation of profits or losses among members;
- 10240 (d) the quorum for a meeting and the rights of voting and governance; or
- 10241 (e) unless otherwise provided in the organic rules, the terms for admission of new  
10242 members.
- 10243 (6) Except for the matters described in Subsection (5), the articles of organization may  
10244 delegate amendment of all or a part of the bylaws to the board of directors without requiring  
10245 member approval.
- 10246 (7) If the articles of organization delegate amendment of bylaws to the board of  
10247 directors, the board shall provide a description of any amendment of the bylaws made by the  
10248 board to the members in a record not later than 30 days after the amendment, but the  
10249 description may be provided at the next annual members meeting if the meeting is held within

10250 the 30-day period.

10251 Section 330. Section **16-16-407** is amended to read:

10252 **16-16-407. Amendment or restatement of articles of organization--Filing.**

10253 (1) To amend its articles of organization, a limited cooperative association [~~must~~] shall  
10254 deliver to the division for filing an amendment of the articles, or restated articles of  
10255 organization or articles of conversion or merger pursuant to Part 16, Conversion and Merger,  
10256 which contain one or more amendments of the articles of organization, stating:

- 10257 (a) the name of the association;
- 10258 (b) the date of filing of the association's initial articles; and
- 10259 (c) the changes the amendment makes to the articles as most recently amended or  
10260 restated.

10261 (2) Before the beginning of the initial meeting of the board of directors, an organizer  
10262 who knows that information in the filed articles of organization was inaccurate when the  
10263 articles were filed or has become inaccurate due to changed circumstances shall promptly:

- 10264 (a) cause the articles to be amended; or
- 10265 (b) if appropriate, deliver an amendment to the division for filing pursuant to Section  
10266 16-16-203.

10267 (3) If restated articles of organization are adopted, the restated articles may be  
10268 delivered to the division for filing in the same manner as an amendment.

10269 (4) Upon filing, an amendment of the articles of organization or other record  
10270 containing an amendment of the articles which has been properly adopted by the members is  
10271 effective as provided in Subsection 16-16-203(3).

10272 Section 331. Section **16-16-501** is amended to read:

10273 **16-16-501. Members.**

10274 To begin business, a limited cooperative association [~~must~~] shall have at least two  
10275 patron members unless the sole member is a cooperative.

10276 Section 332. Section **16-16-507** is amended to read:

10277 **16-16-507. Special meeting of members.**

- 10278 (1) A special meeting of members may be called only:  
10279 (a) as provided in the organic rules;  
10280 (b) by a majority vote of the board of directors on a proposal stating the purpose of the  
10281 meeting;  
10282 (c) by demand in a record signed by members holding at least 20% of the voting  
10283 power of the persons in any district or class entitled to vote on the matter that is the purpose of  
10284 the meeting stated in the demand; or  
10285 (d) by demand in a record signed by members holding at least 10% of the total voting  
10286 power of all the persons entitled to vote on the matter that is the purpose of the meeting stated  
10287 in the demand.
- 10288 (2) A demand under Subsection (1)(c) or (d) [~~must~~] shall be submitted to the officer of  
10289 the limited cooperative association charged with keeping its records.
- 10290 (3) Any voting member may withdraw its demand under Subsection (1)(c) or (d)  
10291 before receipt by the limited cooperative association of demands sufficient to require a special  
10292 meeting of members.
- 10293 (4) A special meeting of members may be held inside or outside this state at the place  
10294 stated in the organic rules or selected by the board of directors not inconsistent with the  
10295 organic rules.
- 10296 (5) Unless the organic rules otherwise provide, members may attend or conduct a  
10297 special meeting of members through the use of any means of communication if all members  
10298 attending the meeting can communicate with each other during the meeting.
- 10299 (6) Only business within the purpose or purposes stated in the notice of a special  
10300 meeting of members may be conducted at the meeting.
- 10301 (7) Unless the organic rules otherwise provide, the presiding officer of a special  
10302 meeting of members shall be designated by the board of directors.
- 10303 Section 333. Section **16-16-508** is amended to read:  
10304 **16-16-508. Notice of members meeting.**  
10305 (1) A limited cooperative association shall notify each member of the time, date, and

10306 place of a members meeting at least 15 and not more than 60 days before the meeting.

10307 (2) Unless the articles of organization otherwise provide, notice of an annual members  
10308 meeting need not include any purpose of the meeting.

10309 (3) Notice of a special meeting of members [~~must~~] shall include each purpose of the  
10310 meeting as contained in the demand under Subsection 16-16-507(1)(c) or (d) or as voted upon  
10311 by the board of directors under Subsection 16-16-507(1)(b).

10312 (4) Notice of a members meeting [~~must~~] shall be given in a record unless oral notice is  
10313 reasonable under the circumstances.

10314 Section 334. Section **16-16-603** is amended to read:

10315 **16-16-603. Transferability of member's interest.**

10316 (1) The provisions of this chapter relating to the transferability of a member's interest  
10317 are subject to Title 70A, Uniform Commercial Code.

10318 (2) Unless the organic rules otherwise provide, a member's interest other than financial  
10319 rights is not transferable.

10320 (3) Unless a transfer is restricted or prohibited by the organic rules, a member may  
10321 transfer the member's financial rights in the limited cooperative association.

10322 (4) The terms of any restriction on transferability of financial rights [~~must~~] shall be:

10323 (a) set forth in the organic rules and the member records of the association; and

10324 (b) conspicuously noted on any certificates evidencing a member's interest.

10325 (5) A transferee of a member's financial rights, to the extent the rights are transferred,  
10326 has the right to share in the allocation of profits or losses and to receive the distributions to the  
10327 member transferring the interest to the same extent as the transferring member.

10328 (6) A transferee of a member's financial rights does not become a member upon  
10329 transfer of the rights unless the transferee is admitted as a member by the limited cooperative  
10330 association.

10331 (7) A limited cooperative association need not give effect to a transfer under this  
10332 section until the association has notice of the transfer.

10333 (8) A transfer of a member's financial rights in violation of a restriction on transfer

10334 contained in the organic rules is ineffective as to a person having notice of the restriction at  
10335 the time of transfer.

10336 Section 335. Section **16-16-801** is amended to read:

10337 **16-16-801. Board of directors.**

10338 (1) A limited cooperative association [~~must~~] shall have a board of directors of at least  
10339 three individuals, unless the association has fewer than three members. If the association has  
10340 fewer than three members, the number of directors may not be fewer than the number of  
10341 members.

10342 (2) The affairs of a limited cooperative association [~~must~~] shall be managed by, or  
10343 under the direction of, the board of directors. The board may adopt policies and procedures  
10344 that do not conflict with the organic rules or this chapter.

10345 (3) An individual is not an agent for a limited cooperative association solely by being  
10346 a director.

10347 Section 336. Section **16-16-803** is amended to read:

10348 **16-16-803. Qualifications of directors.**

10349 (1) Unless the organic rules otherwise provide, and subject to Subsection (3), each  
10350 director of a limited cooperative association [~~must~~] shall be an individual who is a member of  
10351 the association or an individual who is designated by a member that is not an individual for  
10352 purposes of qualifying and serving as a director. Initial directors need not be members.

10353 (2) Unless the organic rules otherwise provide, a director may be an officer or  
10354 employee of the limited cooperative association.

10355 (3) If the organic rules provide for nonmember directors, the number of nonmember  
10356 directors may not exceed:

10357 (a) one, if there are two through four directors;

10358 (b) two, if there are five through eight directors; or

10359 (c) 1/3 of the total number of directors if there are at least nine directors.

10360 (4) The organic rules may provide qualifications for directors in addition to those in  
10361 this section.

10362 Section 337. Section **16-16-804** is amended to read:

10363 **16-16-804. Election of directors and composition of board.**

10364 (1) Unless the organic rules require a greater number:

10365 (a) the number of directors that [~~must~~] shall be patron members may not be fewer

10366 than:

10367 (i) one, if there are two or three directors;

10368 (ii) two, if there are four or five directors;

10369 (iii) three, if there are six through eight directors; or

10370 (iv) 1/3 of the directors if there are at least nine directors; and

10371 (b) a majority of the board of directors [~~must~~] shall be elected exclusively by patron  
10372 members.

10373 (2) Unless the organic rules otherwise provide, if a limited cooperative association has  
10374 investor members, the directors who are not elected exclusively by patron members are elected  
10375 by the investor members.

10376 (3) Subject to Subsection (1), the organic rules may provide for the election of all or a  
10377 specified number of directors by one or more districts or classes of members.

10378 (4) Subject to Subsection (1), the organic rules may provide for the nomination or  
10379 election of directors by districts or classes, directly or by district delegates.

10380 (5) If a class of members consists of a single member, the organic rules may provide  
10381 for the member to appoint a director or directors.

10382 (6) Unless the organic rules otherwise provide, cumulative voting for directors is  
10383 prohibited.

10384 (7) Except as otherwise provided by the organic rules, Subsection (5), or Sections  
10385 16-16-303, 16-16-516, 16-16-517, and 16-16-809, member directors [~~must~~] shall be elected at  
10386 an annual members meeting.

10387 Section 338. Section **16-16-809** is amended to read:

10388 **16-16-809. Vacancy on board.**

10389 (1) Unless the organic rules otherwise provide, a vacancy on the board of directors

10390 [~~must~~] shall be filled:

10391 (a) within a reasonable time by majority vote of the remaining directors until the next  
10392 annual members meeting or a special meeting of members called to fill the vacancy; and

10393 (b) for the unexpired term by members at the next annual members meeting or a  
10394 special meeting of members called to fill the vacancy.

10395 (2) Unless the organic rules otherwise provide, if a vacating director was elected or  
10396 appointed by a class of members or a district:

10397 (a) the new director [~~must~~] shall be of that class or district; and

10398 (b) the selection of the director for the unexpired term [~~must~~] shall be conducted in the  
10399 same manner as would the selection for that position without a vacancy.

10400 (3) If a member appointed a vacating director, the organic rules may provide for that  
10401 member to appoint a director to fill the vacancy.

10402 Section 339. Section **16-16-813** is amended to read:

10403 **16-16-813. Meetings and notice.**

10404 (1) Unless the organic rules otherwise provide, a board of directors may establish a  
10405 time, date, and place for regular board meetings, and notice of the time, date, place, or purpose  
10406 of those meetings is not required.

10407 (2) Unless the organic rules otherwise provide, notice of the time, date, and place of a  
10408 special meeting of a board of directors [~~must~~] shall be given to all directors at least three days  
10409 before the meeting, the notice [~~must~~] shall contain a statement of the purpose of the meeting,  
10410 and the meeting is limited to the matters contained in the statement.

10411 Section 340. Section **16-16-1001** is amended to read:

10412 **16-16-1001. Members' contributions.**

10413 The organic rules [~~must~~] shall establish the amount, manner, or method of determining  
10414 any contribution requirements for members or [~~must~~] shall authorize the board of directors to  
10415 establish the amount, manner, or other method of determining any contribution requirements  
10416 for members.

10417 Section 341. Section **16-16-1002** is amended to read:

10418 **16-16-1002. Contribution and valuation.**

10419 (1) Unless the organic rules otherwise provide, the contributions of a member to a  
10420 limited cooperative association may consist of tangible or intangible property or other benefit  
10421 to the association, including money, labor or other services performed or to be performed,  
10422 promissory notes, other agreements to contribute money or property, and contracts to be  
10423 performed.

10424 (2) The receipt and acceptance of contributions and the valuation of contributions  
10425 ~~[must]~~ shall be reflected in a limited cooperative association's records.

10426 (3) Unless the organic rules otherwise provide, the board of directors shall determine  
10427 the value of a member's contributions received or to be received and the determination by the  
10428 board of directors of valuation is conclusive for purposes of determining whether the member's  
10429 contribution obligation has been met.

10430 Section 342. Section **16-16-1004** is amended to read:

10431 **16-16-1004. Allocations of profits and losses.**

10432 (1) The organic rules may provide for allocating profits of a limited cooperative  
10433 association among members, among persons that are not members but conduct business with  
10434 the association, to an unallocated account, or to any combination thereof. Unless the organic  
10435 rules otherwise provide, losses of the association ~~[must]~~ shall be allocated in the same  
10436 proportion as profits.

10437 (2) Unless the organic rules otherwise provide, all profits and losses of a limited  
10438 cooperative association ~~[must]~~ shall be allocated to patron members.

10439 (3) If a limited cooperative association has investor members, the organic rules may  
10440 not reduce the allocation to patron members to less than 50% of profits. For purposes of this  
10441 Subsection (3), the following rules apply:

10442 (a) Amounts paid or due on contracts for the delivery to the association by patron  
10443 members of products, goods, or services are not considered amounts allocated to patron  
10444 members.

10445 (b) Amounts paid, due, or allocated to investor members as a stated fixed return on

10446 equity are not considered amounts allocated to investor members.

10447 (4) Unless prohibited by the organic rules, in determining the profits for allocation  
10448 under Subsections (1), (2), and (3), the board of directors may first deduct and set aside a part  
10449 of the profits to create or accumulate:

10450 (a) an unallocated capital reserve; and

10451 (b) reasonable unallocated reserves for specific purposes, including expansion and  
10452 replacement of capital assets; education, training, cooperative development; creation and  
10453 distribution of information concerning principles of cooperation; and community  
10454 responsibility.

10455 (5) Subject to Subsections (2) and (6) and the organic rules, the board of directors  
10456 shall allocate the amount remaining after any deduction or setting aside of profits for  
10457 unallocated reserves under Subsection (4):

10458 (a) to patron members in the ratio of each member's patronage to the total patronage of  
10459 all patron members during the period for which allocations are to be made; and

10460 (b) to investor members, if any, in the ratio of each investor member's contributions to  
10461 the total contributions of all investor members.

10462 (6) For purposes of allocation of profits and losses or specific items of profits or losses  
10463 of a limited cooperative association to members, the organic rules may establish allocation  
10464 units or methods based on separate classes of members or, for patron members, on class,  
10465 function, division, district, department, allocation units, pooling arrangements, members'  
10466 contributions, or other equitable methods.

10467 Section 343. Section **16-16-1202** is amended to read:

10468 **16-16-1202. Nonjudicial dissolution.**

10469 Except as otherwise provided in Sections 16-16-1203 and 16-16-1211, a limited  
10470 cooperative association is dissolved and its activities [~~must~~] shall be wound up:

10471 (1) upon the occurrence of an event or at a time specified in the articles of  
10472 organization;

10473 (2) upon the action of the association's organizers, board of directors, or members

10474 under Section 16-16-1204 or 16-16-1205; or

10475 (3) 90 days after the dissociation of a member, which results in the association having  
10476 one patron member and no other members, unless the association:

10477 (a) has a sole member that is a cooperative; or

10478 (b) not later than the end of the 90-day period, admits at least one member in  
10479 accordance with the organic rules and has at least two members, at least one of which is a  
10480 patron member.

10481 Section 344. Section **16-16-1205** is amended to read:

10482 **16-16-1205. Voluntary dissolution by the board and members.**

10483 (1) Except as otherwise provided in Section 16-16-1204, for a limited cooperative  
10484 association to voluntarily dissolve:

10485 (a) a resolution to dissolve [~~must~~] shall be approved by a majority vote of the board of  
10486 directors unless a greater percentage is required by the organic rules;

10487 (b) the board of directors [~~must~~] shall call a members meeting to consider the  
10488 resolution, to be held not later than 90 days after adoption of the resolution; and

10489 (c) the board of directors [~~must~~] shall mail or otherwise transmit or deliver to each  
10490 member in a record that complies with Section 16-16-508:

10491 (i) the resolution required by Subsection (1)(a);

10492 (ii) a recommendation that the members vote in favor of the resolution or, if the board  
10493 determines that because of conflict of interest or other special circumstances it should not  
10494 make a favorable recommendation, the basis of that determination; and

10495 (iii) notice of the members meeting, which [~~must~~] shall be given in the same manner  
10496 as notice of a special meeting of members.

10497 (2) Subject to Subsection (3), a resolution to dissolve [~~must~~] shall be approved by:

10498 (a) at least two-thirds of the voting power of members present at a members meeting  
10499 called under Subsection (1)(b); and

10500 (b) if the limited cooperative association has investor members, at least a majority of  
10501 the votes cast by patron members, unless the organic rules require a greater percentage.

10502 (3) The organic rules may require that the percentage of votes under Subsection (2)(a)  
10503 is:

10504 (a) a different percentage that is not less than a majority of members voting at the  
10505 meeting;

10506 (b) measured against the voting power of all members; or

10507 (c) a combination of Subsections (3)(a) and (b).

10508 Section 345. Section **16-16-1208** is amended to read:

10509 **16-16-1208. Known claims against dissolved limited cooperative association.**

10510 (1) Subject to Subsection (4), a dissolved limited cooperative association may dispose  
10511 of the known claims against it by following the procedure in Subsections (2) and (3).

10512 (2) A dissolved limited cooperative association may notify its known claimants of the  
10513 dissolution in a record. The notice [~~must~~] shall:

10514 (a) specify that a claim be in a record;

10515 (b) specify the information required to be included in the claim;

10516 (c) provide an address to which the claim [~~must~~] shall be sent;

10517 (d) state the deadline for receipt of the claim, which may not be less than 120 days  
10518 after the date the notice is received by the claimant; and

10519 (e) state that the claim will be barred if not received by the deadline.

10520 (3) A claim against a dissolved limited cooperative association is barred if the  
10521 requirements of Subsection (2) are met, and:

10522 (a) the association is not notified of the claimant's claim, in a record, by the deadline  
10523 specified in the notice under Subsection (2)(d);

10524 (b) in the case of a claim that is timely received but rejected by the association, the  
10525 claimant does not commence an action to enforce the claim against the association not later  
10526 than 90 days after receipt of the notice of the rejection; or

10527 (c) if a claim is timely received but is neither accepted nor rejected by the association  
10528 not later than 120 days after the deadline for receipt of claims, the claimant does not  
10529 commence an action to enforce the claim against the association:

10530 (i) after the 120-day period; and  
10531 (ii) not later than 90 days after the 120-day period.

10532 (4) This section does not apply to a claim based on an event occurring after the date of  
10533 dissolution or a liability that is contingent on that date.

10534 Section 346. Section **16-16-1209** is amended to read:

10535 **16-16-1209. Other claims against dissolved limited cooperative association.**

10536 (1) A dissolved limited cooperative association may publish notice of its dissolution  
10537 and request persons having claims against the association to present them in accordance with  
10538 the notice.

10539 (2) A notice under Subsection (1) [~~must~~] shall:

10540 (a) be published:

10541 (i) at least once in a newspaper of general circulation in the county in which the  
10542 dissolved limited cooperative association's principal office is located or, if the association does  
10543 not have a principal office in this state, in the county in which the association's designated  
10544 office is or was last located; and

10545 (ii) as required in Section 45-1-101;

10546 (b) describe the information required to be contained in a claim and provide an  
10547 address to which the claim is to be sent; and

10548 (c) state that a claim against the association is barred unless an action to enforce the  
10549 claim is commenced not later than three years after publication of the notice.

10550 (3) If a dissolved limited cooperative association publishes a notice in accordance with  
10551 Subsection (2), the claim of each of the following claimants is barred unless the claimant  
10552 commences an action to enforce the claim not later than three years after the first publication  
10553 date of the notice:

10554 (a) a claimant that is entitled to but did not receive notice in a record under Section  
10555 16-16-1208; and

10556 (b) a claimant whose claim is contingent or based on an event occurring after the  
10557 effective date of dissolution.

10558 (4) A claim not barred under this section may be enforced:

10559 (a) against a dissolved limited cooperative association, to the extent of its  
10560 undistributed assets; or

10561 (b) if the association's assets have been distributed in connection with winding up the  
10562 association's activities against a member or holder of financial rights to the extent of that  
10563 person's proportionate share of the claim or the association's assets distributed to the person in  
10564 connection with the winding up, whichever is less. The person's total liability for all claims  
10565 under this Subsection (4) [~~shall not~~] may not exceed the total amount of assets distributed to  
10566 the person as part of the winding up of the association.

10567 Section 347. Section **16-16-1212** is amended to read:

10568 **16-16-1212. Reinstatement following administrative dissolution.**

10569 (1) A limited cooperative association that has been dissolved administratively may  
10570 apply to the division for reinstatement not later than two years after the effective date of  
10571 dissolution. The application [~~must~~] shall be delivered to the division for filing and state:

10572 (a) the name of the association and the effective date of its administrative dissolution;

10573 (b) that the grounds for dissolution either did not exist or have been eliminated; and

10574 (c) that the association's name satisfies the requirements of Section 16-16-111.

10575 (2) If the division determines that an application contains the information required by  
10576 Subsection (1) and that the information is correct, the division shall:

10577 (a) prepare a declaration of reinstatement;

10578 (b) file the original of the declaration; and

10579 (c) serve a copy of the declaration on the association.

10580 (3) When reinstatement under this section becomes effective, it relates back to and  
10581 takes effect as of the effective date of the administrative dissolution, and the limited  
10582 cooperative association may resume or continue its activities as if the administrative  
10583 dissolution had not occurred.

10584 Section 348. Section **16-16-1213** is amended to read:

10585 **16-16-1213. Denial of reinstatement -- Appeal.**

10586 (1) If the division denies a limited cooperative association's application for  
10587 reinstatement following administrative dissolution, the division shall prepare and file a notice  
10588 that explains the reason for denial and serve the association with a copy of the notice.

10589 (2) Not later than 30 days after service of a notice of denial of reinstatement by the  
10590 division, a limited cooperative association may appeal the denial by petitioning the district  
10591 court to set aside the dissolution. The petition [~~must~~] shall be served on the division and  
10592 contain a copy of the division's declaration of dissolution, the association's application for  
10593 reinstatement, and the division's notice of denial.

10594 (3) The court may summarily order the division to reinstate the dissolved cooperative  
10595 association or may take other action the court considers appropriate.

10596 Section 349. Section **16-16-1303** is amended to read:

10597 **16-16-1303. Pleading.**

10598 In a derivative action to enforce a right of a limited cooperative association, the  
10599 complaint [~~must~~] shall state:

10600 (1) the date and content of the plaintiff's demand under Subsection 16-16-1301(1) and  
10601 the association's response;

10602 (2) if 90 days have not expired since the demand, how irreparable harm to the  
10603 association would result by waiting for the expiration of 90 days; and

10604 (3) if the association agreed to bring an action demanded, that the action has not been  
10605 brought within a reasonable time.

10606 Section 350. Section **16-16-1402** is amended to read:

10607 **16-16-1402. Application for certificate of authority.**

10608 (1) A foreign cooperative may apply for a certificate of authority by delivering an  
10609 application to the division for filing. The application [~~must~~] shall state:

10610 (a) the name of the foreign cooperative and, if the name does not comply with Section  
10611 16-16-111, an alternative name adopted pursuant to Section 16-16-1405;

10612 (b) the name of the state or other jurisdiction under whose law the foreign cooperative  
10613 is organized;

10614 (c) the street address and, if different, mailing address of the principal office and, if  
10615 the law of the jurisdiction under which the foreign cooperative is organized requires the  
10616 foreign cooperative to maintain another office in that jurisdiction, the street address and, if  
10617 different, mailing address of the required office;

10618 (d) the street address and, if different, mailing address of the foreign cooperative's  
10619 designated office in this state, and the name of the foreign cooperative's agent for service of  
10620 process at the designated office; and

10621 (e) the name, street address and, if different, mailing address of each of the foreign  
10622 cooperative's current directors and officers.

10623 (2) A foreign cooperative shall deliver with a completed application under Subsection  
10624 (1) a certificate of good standing or a similar record signed by the division or other official  
10625 having custody of the foreign cooperative's publicly filed records in the state or other  
10626 jurisdiction under whose law the foreign cooperative is organized.

10627 Section 351. Section **16-16-1405** is amended to read:

10628 **16-16-1405. Noncomplying name of foreign cooperative.**

10629 (1) A foreign cooperative whose name does not comply with Section 16-16-111 may  
10630 not obtain a certificate of authority until it adopts, for the purpose of transacting business in  
10631 this state, an alternative name that complies with Section 16-16-111. A foreign cooperative  
10632 that adopts an alternative name under this Subsection (1) and then obtains a certificate of  
10633 authority with that name need not also comply with Section 42-2-5. After obtaining a  
10634 certificate of authority with an alternative name, a foreign cooperative's business in this state  
10635 [must] shall be transacted under that name unless the foreign cooperative is authorized under  
10636 Section 42-2-5 to transact business in this state under another name.

10637 (2) If a foreign cooperative authorized to transact business in this state changes its  
10638 name to one that does not comply with Section 16-16-111, it may not thereafter transact  
10639 business in this state until it complies with Subsection (1) and obtains an amended certificate  
10640 of authority.

10641 Section 352. Section **16-16-1406** is amended to read:

10642           **16-16-1406. Revocation of certificate of authority.**

10643           (1) A certificate of authority may be revoked by the division in the manner provided in  
10644 Subsection (2) if the foreign cooperative does not:

10645           (a) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the  
10646 division under this chapter or any other law of this state;

10647           (b) deliver, not later than 60 days after the due date, its annual report;

10648           (c) appoint and maintain an agent for service of process; or

10649           (d) deliver for filing a statement of change not later than 30 days after a change has  
10650 occurred in the name of the agent or the address of the foreign cooperative's designated office.

10651           (2) To revoke a certificate of authority, the division [~~must~~] shall file a notice of  
10652 revocation and send a copy to the foreign cooperative's registered agent for service of process  
10653 in this state or, if the foreign cooperative does not appoint and maintain an agent for service of  
10654 process in this state, to the foreign cooperative's principal office. The notice [~~must~~] shall state:

10655           (a) the revocation's effective date, which [~~must~~] shall be at least 60 days after the date  
10656 the division sends the copy; and

10657           (b) the foreign cooperative's noncompliance that is the reason for the revocation.

10658           (3) The authority of a foreign cooperative to transact business in this state ceases on  
10659 the effective date of the notice of revocation unless before that date the foreign cooperative  
10660 cures each failure to comply stated in the notice. If the foreign cooperative cures the failures,  
10661 the division shall so indicate on the filed notice.

10662           Section 353. Section **16-16-1407** is amended to read:

10663           **16-16-1407. Cancellation of certificate of authority -- Effect of failure to have**  
10664 **certificate.**

10665           (1) To cancel its certificate of authority, a foreign cooperative [~~must~~] shall deliver to  
10666 the division for filing a notice of cancellation. The certificate is canceled when the notice  
10667 becomes effective under Section 16-16-203.

10668           (2) A foreign cooperative transacting business in this state may not maintain an action  
10669 or proceeding in this state unless it has a certificate of authority.

10670 (3) The failure of a foreign cooperative to have a certificate of authority does not  
10671 impair the validity of a contract or act of the foreign cooperative or prevent the foreign  
10672 cooperative from defending an action or proceeding in this state.

10673 (4) A member of a foreign cooperative is not liable for the obligations of the foreign  
10674 cooperative solely by reason of the foreign cooperative's having transacted business in this  
10675 state without a certificate of authority.

10676 (5) If a foreign cooperative transacts business in this state without a certificate of  
10677 authority or cancels its certificate, it appoints the division as its agent for service of process for  
10678 an action arising out of the transaction of business in this state.

10679 Section 354. Section **16-16-1503** is amended to read:

10680 **16-16-1503. Notice and action on disposition of assets.**

10681 For a limited cooperative association to dispose of assets under Section 16-16-1502:

10682 (1) a majority of the board of directors, or a greater percentage if required by the  
10683 organic rules, [~~must~~] shall approve the proposed disposition; and

10684 (2) the board of directors [~~must~~] shall call a members meeting to consider the  
10685 proposed disposition, hold the meeting not later than 90 days after approval of the proposed  
10686 disposition by the board, and mail or otherwise transmit or deliver in a record to each member:

10687 (a) the terms of the proposed disposition;

10688 (b) a recommendation that the members approve the disposition, or if the board  
10689 determines that because of conflict of interest or other special circumstances it should not  
10690 make a favorable recommendation, the basis for that determination;

10691 (c) a statement of any condition of the board's submission of the proposed disposition  
10692 to the members; and

10693 (d) notice of the meeting at which the proposed disposition will be considered, which  
10694 [~~must~~] shall be given in the same manner as notice of a special meeting of members.

10695 Section 355. Section **16-16-1504** is amended to read:

10696 **16-16-1504. Disposition of assets.**

10697 (1) Subject to Subsection (2), a disposition of assets under Section 16-16-1502 [~~must~~]

10698 shall be approved by:

10699 (a) at least two-thirds of the voting power of members present at a members meeting  
10700 called under Subsection 16-16-1503(2); and

10701 (b) if the limited cooperative association has investor members, at least a majority of  
10702 the votes cast by patron members, unless the organic rules require a greater percentage vote by  
10703 patron members.

10704 (2) The organic rules may require that the percentage of votes under Subsection (1)(a)  
10705 is:

10706 (a) a different percentage that is not less than a majority of members voting at the  
10707 meeting;

10708 (b) measured against the voting power of all members; or

10709 (c) a combination of Subsections (2)(a) and (b).

10710 (3) Subject to any contractual obligations, after a disposition of assets is approved and  
10711 at any time before the consummation of the disposition, a limited cooperative association may  
10712 approve an amendment to the contract for disposition or the resolution authorizing the  
10713 disposition or approve abandonment of the disposition:

10714 (a) as provided in the contract or the resolution; and

10715 (b) except as prohibited by the resolution, with the same affirmative vote of the board  
10716 of directors and of the members as was required to approve the disposition.

10717 (4) The voting requirements for districts, classes, or voting groups under Section  
10718 16-16-404 apply to approval of a disposition of assets under this part.

10719 Section 356. Section **16-16-1602** is amended to read:

10720 **16-16-1602. Conversion.**

10721 (1) An entity that is not a limited cooperative association may convert to a limited  
10722 cooperative association and a limited cooperative association may convert to an entity that is  
10723 not a limited cooperative association pursuant to this section, Sections 16-16-1603 through  
10724 16-16-1605, and a plan of conversion, if:

10725 (a) the other entity's organic law authorizes the conversion;

10726 (b) the conversion is not prohibited by the law of the jurisdiction that enacted the other  
10727 entity's organic law; and

10728 (c) the other entity complies with its organic law in effecting the conversion.

10729 (2) A plan of conversion [must] shall be in a record and [must] shall include:

10730 (a) the name and form of the entity before conversion;

10731 (b) the name and form of the entity after conversion;

10732 (c) the terms and conditions of the conversion, including the manner and basis for  
10733 converting interests in the converting entity into any combination of money, interests in the  
10734 converted entity, and other consideration; and

10735 (d) the organizational documents of the proposed converted entity.

10736 Section 357. Section **16-16-1603** is amended to read:

10737 **16-16-1603. Action on plan of conversion by converting limited cooperative**  
10738 **association.**

10739 (1) For a limited cooperative association to convert to another entity, a plan of  
10740 conversion [must] shall be approved by a majority of the board of directors, or a greater  
10741 percentage if required by the organic rules, and the board of directors [must] shall call a  
10742 members meeting to consider the plan of conversion, hold the meeting not later than 90 days  
10743 after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to  
10744 each member:

10745 (a) the plan, or a summary of the plan and a statement of the manner in which a copy  
10746 of the plan in a record may be reasonably obtained by a member;

10747 (b) a recommendation that the members approve the plan of conversion, or if the  
10748 board determines that because of a conflict of interest or other circumstances it should not  
10749 make a favorable recommendation, the basis for that determination;

10750 (c) a statement of any condition of the board's submission of the plan of conversion to  
10751 the members; and

10752 (d) notice of the meeting at which the plan of conversion will be considered, which  
10753 [must] shall be given in the same manner as notice of a special meeting of members.

10754 (2) Subject to Subsections (3) and (4), a plan of conversion [~~must~~] shall be approved  
10755 by:

10756 (a) at least two-thirds of the voting power of members present at a members meeting  
10757 called under Subsection (1); and

10758 (b) if the limited cooperative association has investor members, at least a majority of  
10759 the votes cast by patron members, unless the organic rules require a greater percentage vote by  
10760 patron members.

10761 (3) The organic rules may require that the percentage of votes under Subsection (2)(a)  
10762 is:

10763 (a) a different percentage that is not less than a majority of members voting at the  
10764 meeting;

10765 (b) measured against the voting power of all members; or

10766 (c) a combination of Subsections (3)(a) and (b).

10767 (4) The vote required to approve a plan of conversion may not be less than the vote  
10768 required for the members of the limited cooperative association to amend the articles of  
10769 organization.

10770 (5) Consent in a record to a plan of conversion by a member [~~must~~] shall be delivered  
10771 to the limited cooperative association before delivery of articles of conversion for filing if as a  
10772 result of the conversion the member will have:

10773 (a) personal liability for an obligation of the association; or

10774 (b) an obligation or liability for an additional contribution.

10775 (6) Subject to Subsection (5) and any contractual rights, after a conversion is approved  
10776 and at any time before the effective date of the conversion, a converting limited cooperative  
10777 association may amend a plan of conversion or abandon the planned conversion:

10778 (a) as provided in the plan; and

10779 (b) except as prohibited by the plan, by the same affirmative vote of the board of  
10780 directors and of the members as was required to approve the plan.

10781 (7) The voting requirements for districts, classes, or voting groups under Section

10782 16-16-404 apply to approval of a conversion under this part.

10783 Section 358. Section **16-16-1604** is amended to read:

10784 **16-16-1604. Filings required for conversion -- Effective date.**

10785 (1) After a plan of conversion is approved:

10786 (a) a converting limited cooperative association shall deliver to the division for filing  
10787 articles of conversion, which [~~must~~] shall include:

10788 (i) a statement that the limited cooperative association has been converted into another  
10789 entity;

10790 (ii) the name and form of the converted entity and the jurisdiction of its governing  
10791 statute;

10792 (iii) the date the conversion is effective under the governing statute of the converted  
10793 entity;

10794 (iv) a statement that the conversion was approved as required by this chapter;

10795 (v) a statement that the conversion was approved as required by the governing statute  
10796 of the converted entity; and

10797 (vi) if the converted entity is an entity organized in a jurisdiction other than this state  
10798 and is not authorized to transact business in this state, the street address and, if different,  
10799 mailing address of an office which the division may use for purposes of Section 16-16-120;  
10800 and

10801 (b) if the converting entity is not a converting limited cooperative association, the  
10802 converting entity shall deliver to the division for filing articles of organization, which [~~must~~]  
10803 shall include, in addition to the information required by Section 16-16-302:

10804 (i) a statement that the association was converted from another entity;

10805 (ii) the name and form of the converting entity and the jurisdiction of its governing  
10806 statute; and

10807 (iii) a statement that the conversion was approved in a manner that complied with the  
10808 converting entity's governing statute.

10809 (2) A conversion becomes effective:

10810 (a) if the converted entity is a limited cooperative association, when the articles of  
10811 conversion take effect pursuant to Subsection 16-16-203(3); or

10812 (b) if the converted entity is not a limited cooperative association, as provided by the  
10813 governing statute of the converted entity.

10814 Section 359. Section **16-16-1606** is amended to read:

10815 **16-16-1606. Merger.**

10816 (1) One or more limited cooperative associations may merge with one or more other  
10817 entities pursuant to this part and a plan of merger if:

10818 (a) the governing statute of each of the other entities authorizes the merger;

10819 (b) the merger is not prohibited by the law of a jurisdiction that enacted any of those  
10820 governing statutes; and

10821 (c) each of the other entities complies with its governing statute in effecting the  
10822 merger.

10823 (2) A plan of merger [~~must~~] shall be in a record and [~~must~~] shall include:

10824 (a) the name and form of each constituent entity;

10825 (b) the name and form of the surviving entity and, if the surviving entity is to be  
10826 created by the merger, a statement to that effect;

10827 (c) the terms and conditions of the merger, including the manner and basis for  
10828 converting the interests in each constituent entity into any combination of money, interests in  
10829 the surviving entity, and other consideration;

10830 (d) if the surviving entity is to be created by the merger, the surviving entity's  
10831 organizational documents;

10832 (e) if the surviving entity is not to be created by the merger, any amendments to be  
10833 made by the merger to the surviving entity's organizational documents; and

10834 (f) if a member of a constituent limited cooperative association will have personal  
10835 liability with respect to a surviving entity, the identity of the member by descriptive class or  
10836 other reasonable manner.

10837 Section 360. Section **16-16-1607** is amended to read:

10838           **16-16-1607. Notice and action on plan of merger by constituent limited**  
10839 **cooperative association.**

10840           (1) For a limited cooperative association to merge with another entity, a plan of merger  
10841 [~~must~~] shall be approved by a majority vote of the board of directors or a greater percentage if  
10842 required by the association's organic rules.

10843           (2) The board of directors shall call a members meeting to consider a plan of merger  
10844 approved by the board, hold the meeting not later than 90 days after approval of the plan by  
10845 the board, and mail or otherwise transmit or deliver in a record to each member:

10846           (a) the plan of merger, or a summary of the plan and a statement of the manner in  
10847 which a copy of the plan in a record may be reasonably obtained by a member;

10848           (b) a recommendation that the members approve the plan of merger, or if the board  
10849 determines that because of conflict of interest or other special circumstances it should not  
10850 make a favorable recommendation, the basis for that determination;

10851           (c) a statement of any condition of the board's submission of the plan of merger to the  
10852 members; and

10853           (d) notice of the meeting at which the plan of merger will be considered, which [~~must~~]  
10854 shall be given in the same manner as notice of a special meeting of members.

10855           Section 361. Section **16-16-1608** is amended to read:

10856           **16-16-1608. Approval or abandonment of merger by members.**

10857           (1) Subject to Subsections (2) and (3), a plan of merger [~~must~~] shall be approved by:

10858           (a) at least two-thirds of the voting power of members present at a members meeting  
10859 called under Subsection 16-16-1607(2); and

10860           (b) if the limited cooperative association has investor members, at least a majority of  
10861 the votes cast by patron members, unless the organic rules require a greater percentage vote by  
10862 patron members.

10863           (2) The organic rules may provide that the percentage of votes under Subsection (1)(a)  
10864 is:

10865           (a) a different percentage that is not less than a majority of members voting at the

10866 meeting;

10867 (b) measured against the voting power of all members; or

10868 (c) a combination of Subsections (2)(a) and (b).

10869 (3) The vote required to approve a plan of merger may not be less than the vote

10870 required for the members of the limited cooperative association to amend the articles of

10871 organization.

10872 (4) Consent in a record to a plan of merger by a member [~~must~~] shall be delivered to

10873 the limited cooperative association before delivery of articles of merger for filing pursuant to

10874 Section 16-16-1609 if as a result of the merger the member will have:

10875 (a) personal liability for an obligation of the association; or

10876 (b) an obligation or liability for an additional contribution.

10877 (5) Subject to Subsection (4) and any contractual rights, after a merger is approved,

10878 and at any time before the effective date of the merger, a limited cooperative association that is

10879 a party to the merger may approve an amendment to the plan of merger or approve

10880 abandonment of the planned merger:

10881 (a) as provided in the plan; and

10882 (b) except as prohibited by the plan, with the same affirmative vote of the board of

10883 directors and of the members as was required to approve the plan.

10884 (6) The voting requirements for districts, classes, or voting groups under Section

10885 16-16-404 apply to approval of a merger under this part.

10886 Section 362. Section **16-16-1609** is amended to read:

10887 **16-16-1609. Filings required for merger -- Effective date.**

10888 (1) After each constituent entity has approved a merger, articles of merger [~~must~~] shall

10889 be signed on behalf of each constituent entity by an authorized representative.

10890 (2) The articles of merger [~~must~~] shall include:

10891 (a) the name and form of each constituent entity and the jurisdiction of its governing

10892 statute;

10893 (b) the name and form of the surviving entity, the jurisdiction of its governing statute,

10894 and, if the surviving entity is created by the merger, a statement to that effect;

10895 (c) the date the merger is effective under the governing statute of the surviving entity;

10896 (d) if the surviving entity is to be created by the merger and:

10897 (i) will be a limited cooperative association, the limited cooperative association's

10898 articles of organization; or

10899 (ii) will be an entity other than a limited cooperative association, the organizational

10900 document that creates the entity;

10901 (e) if the surviving entity is not created by the merger, any amendments provided for

10902 in the plan of merger to the organizational document that created the entity;

10903 (f) a statement as to each constituent entity that the merger was approved as required

10904 by the entity's governing statute;

10905 (g) if the surviving entity is a foreign organization not authorized to transact business

10906 in this state, the street address and, if different, mailing address of an office which the division

10907 may use for the purposes of Section 16-16-120; and

10908 (h) any additional information required by the governing statute of any constituent

10909 entity.

10910 (3) Each limited cooperative association that is a party to a merger shall deliver the

10911 articles of merger to the division for filing.

10912 (4) A merger becomes effective under this part:

10913 (a) if the surviving entity is a limited cooperative association, upon the later of:

10914 (i) compliance with Subsection (3); or

10915 (ii) subject to Subsection 16-16-203(3), as specified in the articles of merger; or

10916 (b) if the surviving entity is not a limited cooperative association, as provided by the

10917 governing statute of the surviving entity.

10918 Section 363. Section **16-16-1701** is amended to read:

10919 **16-16-1701. Uniformity of application and construction.**

10920 In applying and construing this uniform act, consideration [~~must~~] shall be given to the

10921 need to promote uniformity of the law with respect to its subject matter among states that

10922 enact it.

10923 Section 364. Section **16-17-202** is amended to read:

10924 **16-17-202. Addresses in filings.**

10925 Whenever a provision of this chapter other than Subsection 16-17-209(1)(d) requires  
10926 that a filing state an address, the filing [~~must~~] shall state:

10927 (1) an actual street address or rural route box number in this state; and

10928 (2) a mailing address in this state, if different from the address under Subsection (1).

10929 Section 365. Section **16-17-203** is amended to read:

10930 **16-17-203. Appointment of registered agent.**

10931 (1) A registered agent filing [~~must~~] shall state:

10932 (a) the name of the represented entity's commercial registered agent; or

10933 (b) if the entity does not have a commercial registered agent:

10934 (i) the name and address of the entity's noncommercial registered agent; or

10935 (ii) the title of an office or other position with the entity if service of process is to be  
10936 sent to the person holding that office or position, and the address of the business office of that  
10937 person.

10938 (2) The appointment of a registered agent pursuant to Subsection (1)(a) or (b)(i) is an  
10939 affirmation by the represented entity that the agent has consented to serve as such.

10940 (3) The division shall make available in a record as soon as practicable a daily list of  
10941 filings that contain the name of a registered agent. The list [~~must~~] shall:

10942 (a) be available for at least 14 calendar days;

10943 (b) list in alphabetical order the names of the registered agents; and

10944 (c) state the type of filing and name of the represented entity making the filing.

10945 Section 366. Section **16-17-204** is amended to read:

10946 **16-17-204. Listing of commercial registered agent.**

10947 (1) An individual or a domestic or foreign entity may become listed as a commercial  
10948 registered agent by filing with the division a commercial registered agent listing statement  
10949 signed by or on behalf of the person which states:

10950 (a) the name of the individual or the name, type, and jurisdiction of organization of the  
10951 entity;

10952 (b) that the person is in the business of serving as a commercial registered agent in this  
10953 state; and

10954 (c) the address of a place of business of the person in this state to which service of  
10955 process and other notice and documents being served on or sent to entities represented by it  
10956 may be delivered.

10957 (2) A commercial registered agent listing statement may include the information  
10958 regarding acceptance of service of process in a record by the commercial registered agent  
10959 provided for in Subsection 16-17-301(4).

10960 (3) If the name of a person filing a commercial registered agent listing statement is not  
10961 distinguishable on the records of the division from the name of another commercial registered  
10962 agent listed under this section, the person [~~must~~] shall adopt a fictitious name that is  
10963 distinguishable and use that name in its statement and when it does business in this state as a  
10964 commercial registered agent.

10965 (4) A commercial registered agent listing statement takes effect on filing.

10966 (5) The division shall note the filing of the commercial registered agent listing  
10967 statement in the index of filings maintained by the division for each entity represented by the  
10968 registered agent at the time of the filing. The statement has the effect of deleting the address  
10969 of the registered agent from the registered agent filing of each of those entities.

10970 Section 367. Section **16-17-210** is amended to read:

10971 **16-17-210. Appointment of agent by nonfiling or nonqualified foreign entity.**

10972 (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file  
10973 with the division a statement appointing an agent for service of process signed on behalf of the  
10974 entity which states:

10975 (a) the name, type, and jurisdiction of organization of the entity; and

10976 (b) the information required by Subsection 16-17-203(1).

10977 (2) A statement appointing an agent for service of process takes effect on filing.

10978 (3) The appointment of a registered agent under this section does not qualify a  
10979 nonqualified foreign entity to do business in this state and is not sufficient alone to create  
10980 personal jurisdiction over the nonqualified foreign entity in this state.

10981 (4) A statement appointing an agent for service of process may not be rejected for  
10982 filing because the name of the entity filing the statement is not distinguishable on the records  
10983 of the division from the name of another entity appearing in those records. The filing of a  
10984 statement appointing an agent for service of process does not make the name of the entity  
10985 filing the statement unavailable for use by another entity.

10986 (5) An entity that has filed a statement appointing an agent for service of process may  
10987 cancel the statement by filing a statement of cancellation, which shall take effect upon filing,  
10988 and [~~must~~] shall state the name of the entity and that the entity is canceling its appointment of  
10989 an agent for service of process in this state. A statement appointing an agent for service of  
10990 process which has not been canceled earlier is effective for a period of five years after the date  
10991 of filing.

10992 (6) A statement appointing an agent for service of process for a nonqualified foreign  
10993 entity terminates automatically on the date the entity becomes a qualified foreign entity.

10994 Section 368. Section **16-17-301** is amended to read:

10995 **16-17-301. Service of process on entities.**

10996 (1) A registered agent is an agent of the represented entity authorized to receive  
10997 service of any process, notice, or demand required or permitted by law to be served on the  
10998 entity.

10999 (2) If an entity that previously filed a registered agent filing with the division no longer  
11000 has a registered agent, or if its registered agent cannot with reasonable diligence be served, the  
11001 entity may be served by registered or certified mail, return receipt requested, addressed to the  
11002 governors of the entity by name at its principal office in accordance with any applicable  
11003 judicial rules and procedures. The names of the governors and the address of the principal  
11004 office may be as shown in the most recent annual report filed with the division. Service is  
11005 perfected under this Subsection (2) at the earliest of:

- 11006 (a) the date the entity receives the mail;
- 11007 (b) the date shown on the return receipt, if signed on behalf of the entity; or
- 11008 (c) five days after its deposit with the United States Postal Service, if correctly
- 11009 addressed and with sufficient postage.
- 11010 (3) If process, notice, or demand cannot be served on an entity pursuant to Subsection
- 11011 (1) or (2), service of process may be made by handing a copy to the manager, clerk, or other
- 11012 person in charge of any regular place of business or activity of the entity if the person served is
- 11013 not a plaintiff in the action.
- 11014 (4) Service of process, notice, or demand on a registered agent [~~must~~] shall be in the
- 11015 form of a written document, except that service may be made on a commercial registered agent
- 11016 in such other forms of a record, and subject to such requirements as the agent has stated from
- 11017 time to time in its listing under Section 16-17-204 that it will accept.
- 11018 (5) Service of process, notice, or demand may be perfected by any other means
- 11019 prescribed by law other than this chapter.
- 11020 Section 369. Section **16-17-402** is amended to read:
- 11021 **16-17-402. Consistency of application.**
- 11022 In applying and construing this chapter, consideration [~~must~~] shall be given to the need
- 11023 to promote consistency of the law with respect to its subject matter among states that enact it.