

**In the Utah Supreme Court**

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University of Utah,

*Defendant and Appellant,*

v.

No. 20230672-SC

Amelia Tullis and John Tullis,

*Plaintiffs and Appellees.*

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**Rule 25A Brief of Amicus Curiae  
The Office of the Utah Attorney General**

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On interlocutory appeal from the Third Judicial District Court  
Honorable Adam T. Mow  
No. 190907183

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## Introduction

The University has given this Court ample reasons why *Condemarin* is non-binding. Among the most compelling of those reasons are the remedies the legislature added to the Governmental Immunity Act (GIA) after *Condemarin*, including a larger damages cap and excess damages remedy. Those expanded remedies materially differ from the \$100,000 damages cap at issue in *Condemarin*. Thus, this Court should re-evaluate the constitutionality of the GIA's remedies, without deference to *Condemarin*.

This brief supplements the University's arguments about the GIA's expanded remedies and how those remedies gut *Condemarin*'s precedential value and satisfy the Open Courts Clause. The expanded remedies satisfy that Clause because they don't abrogate any remedy and, even if they did, they provide a reasonable and effective alternative remedy. Indeed, the excess damages remedy allows plaintiffs who have had a judgment reduced by the GIA's damages cap to seek the full amount of their damages from the Board of Examiners.

## Argument

### I. The legislature responded to *Condemarin* with constitutionally adequate remedies

In *Condemarin*, the Court stated that a fixed \$100,000 “recovery limits statute[]” is “unconstitutional as applied to the University Hospital.”

*Condemarin v. Univ. Hosp.*, 775 P.2d 348, 348 n.1, 361, 366 (Utah 1989) (Durham, J., lead opinion). But the Court didn’t suggest that a recovery limits statute could never pass constitutional muster. To the contrary, the lead opinion signaled that the Utah legislature could potentially enact a statute that would survive this Court’s scrutiny. *See id.* at 363.

The Utah legislature has made substantial efforts to do so. In the thirty five years following *Condemarin*, the legislature has enacted statutes that have materially expanded the remedies available to malpractice plaintiffs. The fixed \$100,000 damages cap no longer exists. As the University notes, the legislature replaced that cap with a significantly larger, inflation-adjusted cap and added a remedy that allows plaintiffs to submit an “excess claim” to the Board of Examiners.<sup>1</sup> Univ. Br. at 1, 13, Univ. Reply Br. at 14-

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<sup>1</sup> Based on the date of occurrence of the injury, the cap applicable for the plaintiffs’ claim is \$745,200. Utah Admin. Code R37-4-3(12). Because of subsequent adjustments, the cap is now \$827,000. *Id.* R37-4-3(12).

15. Those changes (A) compel this Court to re-evaluate the constitutionality of the GIA's remedies and (B) render the GIA constitutional.

**A. The changes to the GIA after *Condemarin* compel this Court to re-evaluate the constitutionality of the GIA's remedies**

This Court should evaluate the expanded statutory remedies on their own merits without deferring to *Condemarin*. A change in law can “undercut the value of [this Court’s] precedent. *State v. Goins*, 2017 UT 61, ¶ 45, 423 P.3d 1236. When the law changes, this Court is not “being asked to weigh the benefits of adherence to against the proposed reconsideration of our precedent.” *Id.* The Court is being asked to determine if stare decisis compels it to “extend a precedent to the conclusion mandated by its rationale.” *Pleasant Grove City v. Terry*, 2020 UT 69, ¶ 41, 478 P.3d 1026.

*Condemarin*'s rationale doesn't mandate that this Court strike down the expanded remedies now provided by the GIA. First, as the University has ably demonstrated, *Condemarin* lacks a majority rationale for striking down even a \$100,000 damages cap. Univ. Br. at 10-14; *see also Condemarin*, 775 P.2d at 369 (Stewart, J., separate opinion) (“I do not agree with [Justice Durham’s] legal analysis” and noting that “contrary to her view, there are real and important differences between equal protection and the Utah open courts clause analyses, and they are different from a due process analysis.”). The lack of a majority rationale means *Condemarin* isn't “binding precedent

for future cases.” 20 Am. Jur. 2d Courts § 134; *see also Saleh v. Tillerson*, 293 F. Supp. 3d 419, 426 (S.D.N.Y. 2018) (noting that “where no common rationale exists,” a case “should be read only for its persuasive force”) (internal quotation marks omitted).

Even if a majority had agreed on a rationale, as plaintiffs contend, Aple. Br. at 15-19, plaintiffs must show that rationale mandates striking down the expanded remedies now available to them. But plaintiffs haven’t done so. As the University points out, plaintiffs haven’t addressed the excess damages remedy and its effect on the constitutionality of the current recovery limits statutes. Univ. Br. at 20; *see* Aple. Br. at 34 (stating the “GIA reduces injured patients’ potential recovery from the Hospital to \$745,200 but offers no alternative benefit.”). *Condemarin* doesn’t answer the question of whether the expanded remedies are constitutional. Indeed, nothing like the excess damages remedy was before the Court in that case.

Thus, this Court should evaluate the constitutionality of the expanded remedies now available to plaintiffs, without deference to *Condemarin*. To assist the Court in that evaluation, this brief provides the following analysis. This analysis emphasizes the excess damages remedy, since it has received comparatively little attention (and none from plaintiffs).

## **B. The expanded statutory remedies don't violate the Open Courts Clause**

Plaintiffs contend that a common rationale of the *Condemarin* plurality was the “damages cap infringes upon a remedy protected by the Open Courts Clause.” Aple. Br. at 16. Likewise, they argue that if this Court considers the matter “afresh,” it should determine the damages cap violates the Open Courts Clause as applied to the Hospital. Aple. Br. at 32.

If this Court considers the matter afresh, it should hold that the GIA doesn't violate the Open Courts Clause because (1) it doesn't abrogate a cause of action or remedy and (2) provides an “effective and reasonable alternative remedy.” See Aple. Br. at 32 (citations omitted).

### **1. The GIA didn't abrogate a remedy**

Plaintiffs contend the damages cap “abrogates a remedy that would have been available under the common law and the GIA as originally enacted” in the mid-1960's. Aple. Br. at 33. Plaintiffs are incorrect.

#### **a. Neither the damages cap at issue in *Condemarin* nor the current expanded remedies abrogate a remedy available at statehood**

When Utah became a state, it was vested with sovereign immunity, which is a constitutional right. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (“State sovereign immunity, no less than the right to trial by jury in criminal cases, is constitutionally protected.”); *Alden v. Maine*, 527 U.S. 706, 733 (1999) (“Although the

sovereign immunity of the States derives at least in part from the common-law tradition, the structure and history of the Constitution make clear that the immunity exists today by constitutional design.”).

Sovereign immunity precludes state entities from being sued unless the state “has, through legislative or constitutional action, given consent to be sued.” *Campbell Bldg. Co. v. State Rd. Comm’n*, 95 Utah 242, 249, 70 P.2d 857, 861 (1937); *Wilkinson v. State*, 42 Utah 483, 492-93, 134 P. 626, 630 (1913) (noting that the doctrine that sovereign state cannot be sued without “express constitutional or statutory authority”); *see also Tiede v. State of Utah*, 915 P.2d 500, 503-04 (Utah 1996) (holding that GIA didn’t violate constitutional provision prohibiting abrogation of wrongful death action by retaining sovereign immunity for that action because, at statehood, “there here was no express constitutional or statutory authority allowing suits for wrongful death against the State”).

At statehood, Utah didn’t authorize lawsuits against state entities, either in its constitution or by statute. Rather, the Utah constitution required injured parties to submit claims against state entities to the Board of Examiners. Utah Const., art. VII, § 13 (repealed 1991) (stating “no claim against the State” could be “passed upon by the Legislature without having been considered and acted upon by the . . . Board of Examiners,” comprising the Governor, Secretary of State, and Attorney General.”); *Tiede*, 915 P.2d at

504 (stating that when the “constitution was adopted . . . all claims against the State had to be presented to the State Board of Examiners”).

In support of Article VII, section 13, the Utah legislature promptly passed implementing legislation that allowed the Board to “hear[] evidence on the merits of each claim” and to deny the claim or approve payment to settle the claim, after which the proposed settlement was “sent to the legislature for its approval and appropriation.” *Tiede*, 915 P.2d at 504 (citing 1898 Revised Statutes of Utah §§ 929, 933-937, 938). Thus, before the GIA, the Board of Examiners “investigate[d] and act[ed] as a fact finder and advisor the legislature” on “tort claims” and “other claims for damages or compensation.” *Bateman v. Bd. of Examiners of State of Utah*, 7 Utah 2d 221, 227, 322 P.2d 381, 385 (1958).

Article VII, section 13, didn’t provide an exception for claims for injuries caused by proprietary or nongovernmental functions. Without exception, “all claims” had to be presented to the Board of Examiners. *Tiede*, 915 P.2d at 504. Thus, at statehood, Utah’s sovereign immunity was absolute. *See DeBry v. Noble*, 889 P.2d 428, 439 (Utah 1995) (“*absolute* state immunity *later* gave way to judicial modifications that made state immunity essentially congruent with the municipal cases”) (citing *Wilkinson*, 134 P. at 630)

(emphases added) (Stewart, J., joined by Durham, J.)<sup>2</sup>; cf. *Hutchinson v. Bd. of Trustees of Univ. of Ala.*, 256 So. 2d 281, 284 (Ala. 1971) (stating the “operation of a hospital is a ‘governmental function,’ but even if we should classify the operation of University Hospital as being a ‘business function,’ nevertheless, the State could not be sued.”)<sup>3</sup>; *Anne Arundel Cnty. v. Fratantuono*, 239 Md. App. 126, 133, 196 A.3d 25, 29 (2018) (stating that the “State enjoys absolute immunity from claims except to the extent it consents

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<sup>2</sup> “[J]udicial modifications” to the state’s sovereign immunity that have the effect of allowing state entities to be sued without “express constitutional or statutory authority” intrude on the legislative prerogative. See *Wilkinson*, 134 P. 626 at 630; *Tiede*, 915 P.2d at 504 (noting the absence of “constitutional or statutory authority” at statehood for a claim). If the Court made any such unauthorized modifications previously, it may have done so under the mistaken impression that the “whole immunity doctrine was court created.” *Debry*, 889 P.2d at 439; *Alden*, 527 U.S. at 733 (stating sovereign “immunity exists today by constitutional design”); see *Galindo v. City of Flagstaff*, 2019 UT 67, ¶ 9 n.2, 452 P.3d 1185 (stating “‘municipalities, unlike States, do not enjoy a constitutionally protected immunity from suit’ under the Eleventh Amendment”) (quoting *Jinks v. Richland Cty.*, 538 U.S. 456, 466 (2003)).

<sup>3</sup> Of note, the Tenth Circuit held that the “University of Utah Medical Center, as a part of the University of Utah, is an arm of the state” and entitled to partake of Utah’s Eleventh Amendment sovereign immunity, although “only a small amount of its funding, somewhere between 3.5 and 5%, comes from state appropriations.” *Watson v. Univ. of Utah Med. Ctr.*, 75 F.3d 569, 576 (10th Cir. 1996). In so doing, the Court properly didn’t consider if the Medical Center’s functions were proprietary or nongovernmental. *Id.*; *Coll. Sav. Bank*, 527 U.S. at 685 (stating “a suit by an individual against an unconsenting State is the very evil at which the Eleventh Amendment is directed—and it exists whether or not the State is acting for profit, in a traditionally ‘private’ enterprise, and as a ‘market participant’”).

otherwise, counties generally enjoy immunity only when performing governmental, as opposed to proprietary, functions”); *accord Galindo*, 2019 UT 67, ¶ 19 (stating governmental immunity and sovereign immunity “are distinct immunities and should not be conflated”).

*Condemarin’s* lead opinion conflated governmental and sovereign immunities. In that case, the University Hospital (Hospital) correctly argued that because “sovereign immunity was a well-settled principle at the time the Utah Constitution was adopted, the challenged provisions of the [GIA] do not deprive plaintiffs of any remedies or property rights.” *Condemarin*, 775 P.2d at 351 (Durham, J., lead opinion). But the lead opinion rejected that argument because it “overlooks the fact that at common law the proprietary or nongovernmental functions of government entities were *not* protected from liability in Utah.” *Id.*

That fact may have been true for some local government entities but, as already discussed, it was not true for state entities, who enjoyed absolute sovereign immunity. The lead opinion overlooked that distinction because the cases it cited to show proprietary functions weren’t immunized at common law involved suits against municipalities, not state entities. *Id.* at 349-350 (citing, *inter alia*, *Ramirez v. Ogden City*, 279 P.2d 463, 464 (1955)). And the lead opinion also overlooked the historical fact that at statehood, and until the GIA was enacted, “all claims against the State had to be presented to the

State Board of Examiners.” *Tiede*, 915 P.2d at 504; *Hulbert v. State*, 607 P.2d 1217, 1220 (Utah 1980) (stating Article VII, Section 13, “does not inhibit the authority of the legislature to waive sovereign immunity and grant recourse to the citizens of this State in the courts”).<sup>4</sup>

Thus, this Court should determine that neither the damages cap at issue in *Condemarin*, nor the current expanded remedies, abrogate any judicial remedies against state entities when Utah became a state.

**b. Neither the damages cap at issue in *Condemarin* nor the current expanded remedies abrogate a remedy available when the GIA was originally enacted**

As shown, as a state entity, the University had immunity before the GIA was enacted. Originally enacted in 1966, the GIA retained immunity for entities “engaged in the exercise and discharge of a governmental function” except as otherwise provided by the GIA. Utah Code § 63-30-3 (1966). For the reasons below, the 1966 GIA retained the University’s immunity.

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<sup>4</sup> One explanation for those oversights and resulting faulty conclusions is that the Court lacked sufficient adversarial briefing on due process or the “hybrid” due process-open courts analysis used by the lead opinion. The issue on appeal was whether the damages cap violated the equal protection clause. *Condemarin*, 775 P.2d at 375 (Hall, C.J., dissenting). Thus, a majority of the Court criticized the lead opinion for relying on a due process theory because plaintiffs hadn’t raised that theory. *See id.* at 369 (finding “no reason to rely on a due process analysis, since it has not been raised”) (Stewart, J., separate opinion) (emphasis added); *id.* at 378 (noting reliance on substantive due process violated the principle that the Court “necessarily avoid addressing and striking down statutes pursuant to constitutional grounds, *especially those not urged by the parties*”) (Hall, C.J., dissenting) (emphasis added).

Before the GIA’s enactment, when setting forth the “general test of governmental function,” this Court cited the “maintenance and operation of . . . hospitals” as an example of a governmental function. *See Ramirez*, 279 P.2d at 465 (citing Prosser, Torts, 1070 –1071 (1941)). And, as late as 1961, this Court continued to quote that language from *Ramirez*. *Jopes v. Salt Lake Cnty.*, 343 P.2d 728, 730 (1959), overruled in part by *Standiford v. Salt Lake City Corp.*, 605 P.2d 1230 (Utah 1980)); *Cobia v. Roy City*, 366 P.2d 986, 988 (Utah 1961), *overruled by Thomas v. Clearfield City*, 642 P.2d 737 (Utah 1982).

Yet, nine years after the GIA’s enactment, this Court held that the operation of a hospital by a city was “in a proprietary capacity.” *Greenhalgh v. Payson City*, 530 P.2d 799, 802 (Utah 1975) (noting that its holding “is consistent with the general trend of the more recent decisions”).

In 1978, the legislature responded to *Greenhalgh* by amending section 63-30-3 to add a “specific[] exempt[ion] [for] governmentally-owned hospitals, nursing homes, and other governmental health care facilities from liability.” *Standiford*, 605 P.2d at 1232 n.1, *superseded by statute* Utah Code § 63–30–2(4)(a) (1987).

In *Standiford*, this Court *sua sponte* “redefin[ed]” the term “governmental function” as used in the GIA so as to “broaden[] governmental liability” and to “allow more innocent victims injured by tortious conduct on

the part of public entities access to courts for redress.” *Id.* at 1236, 1237; *id.* at 1237 (Hall, J., dissenting) (noting that “no challenge was made to the ‘proprietary-governmental’ rule in the court below, nor on this appeal.”).

But, later that same year, this Court held “the operation of a governmentally-owned health care facility such as the University Medical Center to be a ‘governmental function’” as contemplated by section 63-30-3 before the 1978 amendments. *Frank v. State*, 613 P.2d 517, 519 (Utah 1980), *holding modified by Hansen v. Salt Lake Cnty.*, 794 P.2d 838 (Utah 1990). Those amendments were an “obvious manifestation of legislative intent” to retain immunity for governmentally-owned health care facilities, both before and after the amendments. *See id.*

Thus, under *Frank*, the GIA, as originally enacted, retained the University Medical Center’s immunity. Utah Code § 63-30-3 (1966) (retaining immunity for entities engaged in “governmental functions”). It did not, as plaintiffs evidently contend, subject the University Medical Center (aka Hospital) to suits for unlimited damages. Thus, neither the statutory cap at issue in *Condemarin* nor the expanded statutory remedies at issue here abrogate a remedy available when the GIA was originally enacted.

*Condemarin* didn’t overrule *Frank*, whose holding remains good law. Although Justice Durham disagreed with *Frank*’s holding in part I of her

opinion, *Condemarin*, 775 P.2d at 351 (Durham, J., lead opinion),<sup>5</sup> Justice Zimmerman joined only parts III and IV of her opinion. *Id.* at 366 (Zimmerman, J., concurring in part). And the dissent invoked *Frank*'s holding. *Id.* at 384. (Hall, C.J., dissenting). What's more, Justice Durham noted that "the question of whether the University of Utah Medical Center is performing an essential governmental function has not been decided in this case." *Id.* at 352 n.5 (Durham, J., lead opinion).

## **2. The expanded remedies satisfy the Open Courts Clause**

Even if the GIA had abrogated a remedy, it doesn't violate the Open Courts Clause because it provides a reasonable and effective alternative remedy. To the analysis already provided by the University, this brief adds the following.

The legislature added the excess damages remedy shortly after (and in direct response to) *Condemarin*. 1991 Utah Laws 89, codified at Utah Code § 63-30-3 (1991) (attached as Ex. A). The amendment's Senate sponsor, Haven J. Barlow, explained that before the legislature adopted the damages cap, plaintiffs "couldn't even sue the [H]ospital" but instead "had to come to the legislature."<sup>6</sup> Recording of Utah Senate Floor Debates, S.B. 53, 49th

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<sup>5</sup> Justice Stewart also disagreed with *Frank*. *Id.* at 466 (Stewart, J., separate opinion).

<sup>6</sup> Sen. Barlow's reference to "com[ing] to the legislature" is an allusion to the process after the Board of Examiners considers a claim. *Tiede*, 915 P.2d at

Leg., Gen. Sess. (Jan. 30, 1991) (statement of Sen. Barlow), [le.utah.gov/av/floorArchive.jsp?markerID=89767](http://le.utah.gov/av/floorArchive.jsp?markerID=89767). But when the legislature permitted “the [H]ospital to be sued . . . the trade off was that [plaintiffs] had to live by the cap.” *Id.* But, because *Condemarin* struck the damages cap, now “there’s no limit to what [the Hospital] can be sued.” *Id.* Under the new excess damages remedy, the plaintiffs “have to go through one more hurdle, and that is to come to the legislature for anything above” the cap, which by then had increased to \$250,000. *Id.* When asked what the bill accomplishes given that “[S]tate ends up paying” when the excess damages claim “goes to the Board of Examiners,” Senator Barlow explained the bill is intended to “have 104 people [in the legislature] make that final decision” rather than a “jury which has no limitations.” *Id.*

As part of its major revisions to the GIA in 2004, the legislature repealed section 63-30-3, *see* 2004 Utah Laws 1172 (attached as Ex. B), but enacted a similar excess claim provision in a new section (section 63-30d-701), *see id.*, at 1198. Section 63-30d-701 was later renumbered to section 63G-7-701. 2008 Utah Laws 3588. That section provides that “[i]f a judgment against the state is reduced by the operation of Section 63G-7-604, the

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504 (noting that, historically, a claim would go to the legislature after the Examiners approved it).

claimant may submit the excess claim to the board of examiners.” Utah Code § 63G-7-701(3).

Effective May 14, 2019, the legislature enacted additional procedures for the submission of excess damages claims to the Board of Examiners. 2019 Utah Laws 1460, 1465 (codified as Utah Code § 63G-9-302.5) (attached as Ex. C). These procedures require, inter alia, the submission of a “written statement of claim” within 180 days of a “final, nonappealable judgment” or settlement. Utah Code § 63G-9-302.5(2). And they permit the Board of Examiners to “require a claimant’s excess damages claim to be submitted to a special master” unless the “claim is based on a court judgment following a verdict by a trial of fact.” *Id.* § 63G-9-302.5(8)(a)-(b).

With or without the 2019 amendments, this remedy is constitutionally adequate because it is “an effective and reasonable alternative” to the remedy allegedly abrogated. *Waite v. Utah Lab. Comm’n*, 2017 UT 86, ¶ 19, 416 P.3d 635 (internal quotation marks omitted). The statutes provide a process by which a claimant may seek the full amount of its claim.<sup>7</sup>

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<sup>7</sup> The Attorney General’s Office also agrees with the University that plaintiffs haven’t shown that the GIA’s expanded remedies violate the Uniform Operation of Laws provision. Plaintiffs’ challenge isn’t adequately briefed because it overlooks the excess damages claim remedy. And unlike private entities, state entities have sovereign immunity—a constitutional right—and thus may be treated differently from private entities without violating the Uniform Operation of Laws provision. *ABCO Enterprises v. Utah State Tax Comm’n*, 2009 UT 36, ¶ 14, 211 P.3d 382 (stating that “persons in different

## Conclusion

For the foregoing reasons, this Court should reverse the district court's ruling and grant the relief requested by the University.

Respectfully submitted,

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circumstances should not be treated as if their circumstances were the same”) (internal quotation marks omitted). Contrary to plaintiffs’ assertion, the damages cap did not “infringe[] upon a remedy protected by the Open Courts Clause,” Aple. Br. at 38, as shown earlier, *supra* at 9-17. And neither do the expanded remedies. Thus, heightened scrutiny doesn’t apply.

## Certificate of Compliance

1. At 3,236 words, this brief does not exceed rule 25's word limit of 7,000 words. Utah R. App. P. 25(f).
2. This brief complies with rule 25's size, margin, and typeface requirements, if any.
3. This brief complies with rule 21 because it does not contain any private or non-public information.

/s/ Andrew Dymek

## Certificate of Service

I hereby certify that on August 5, 2024, a true, correct, and complete copy of the foregoing brief served on the parties via email as follows:

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/s/Andrew Dymek

# **Exhibit A**

1991 Utah Laws 89

Senate Bill 53

**CHAPTER 15  
S.B. No. 53**

Passed February 26, 1991  
Approved March 13, 1991  
Effective April 29, 1991

**GOVERNMENTAL IMMUNITY  
ACT CLARIFICATION**

By Haven J. Barlow  
Fred W. Finlinson  
Robert C. Steiner

**AN ACT RELATING TO GOVERNMENTAL IMMUNITY; PROVIDING THAT BECAUSE STATE OWNED MEDICAL FACILITIES ARE GOVERNMENTAL FUNCTIONS WITHIN THE CORE OF GOVERNMENTAL ACTIVITY, THEY ARE ENTITLED TO GOVERNMENTAL IMMUNITY.**

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

**AMENDS:**

**63-30-3, AS LAST AMENDED BY CHAPTER 93, LAWS OF UTAH 1985**

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

**Section 1. Section Amended.**

Section 63-30-3, Utah Code Annotated 1953, as last amended by Chapter 93, Laws of Utah 1985, is amended to read:

**63-30-3. Immunity of governmental entities from suit.**

(1) Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally-owned hospital, nursing home, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.

(2) (a) For the purposes of this chapter only, the following state medical programs and services performed at a state-owned university hospital are unique or essential to the core of governmental activity in this state and are considered to be governmental functions:

(i) care of a patient referred by another hospital or physician because of the high risk nature of the patient's medical condition;

(ii) high risk care or procedures available in Utah only at a state-owned university hospital or provided in Utah only by physicians employed at a state-owned university acting in the scope of their employment;

(iii) care of patients who cannot receive appropriate medical care or treatment at another medical facility in Utah; and

(iv) any other service or procedure performed at a state-owned university hospital or by physicians employed at a state-owned university acting in the scope of their employment that a court finds is

unique or essential to the core of governmental activity in this state.

(b) If any claim under this subsection exceeds the limits established in Section 63-30-34, the claimant may submit the excess claim to the Board of Examiners and the Legislature under Chapter 6, Title 63.

(3) The management of flood waters and other natural disasters and the construction, repair, and operation of flood and storm systems by governmental entities are considered to be governmental functions, and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.

# **Exhibit B**

2004 Utah Laws 1171-1215

Senate Bill 55

**CHAPTER 267****S. B. 55**

Passed March 3, 2004  
 Approved March 23, 2004  
 Effective July 1, 2004

**GOVERNMENTAL IMMUNITY  
ACT OF UTAH**

Sponsor: Leonard M. Blackham

**LONG TITLE****General Description:**

This bill enacts a new governmental immunity act.

**Highlighted Provisions:**

This bill:

- ▶ defines the scope of liability and immunity of Utah's state and local governments and their employees;
- ▶ defines terms;
- ▶ establishes immunity from suit for injuries that result from the exercise of a government function;
- ▶ waives government immunity from suit for certain specific governmental functions and provides exceptions to certain of those waivers;
- ▶ establishes procedures for making claims against a government entity or employee when an alleged injury has occurred;
- ▶ establishes jurisdiction and venue requirements for actions against government entities and employees;
- ▶ defines certain procedures and requirements for legal actions brought under this chapter;
- ▶ establishes a process for submitting claims for payment to a government entity and authorizes certain options that government entities may use to pay claims;
- ▶ authorizes government entities to self-insure or purchase liability insurance for potential claims against the entity and establishes procedures and requirements for implementing those options;
- ▶ establishes limits on judgments against government entities or employees;
- ▶ addresses legal representation and settlement authority for claims against executive, legislative, and judicial entities and employees;
- ▶ establishes a process for defending employees generally when claims are asserted against them and defines the scope of that representation; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a transition clause.

This bill takes effect on July 1, 2004.

This bill provides a coordination clause enacting Section 63-30d-203, if S.B. 9 passes and certain conditions are met.

This bill provides a coordination clause amending Section 63-30d-401, if H.B. 111 passes.

**Utah Code Sections Affected:****AMENDS:**

- 7-2-9, as last amended by Chapter 177, Laws of Utah 1990
- 17-50-401, as enacted by Chapter 133, Laws of Utah 2000
- 17A-2-1830, as enacted by Chapter 216, Laws of Utah 1995
- 31A-1-301, as last amended by Chapters 131 and 298, Laws of Utah 2003
- 31A-2-306, as last amended by Chapter 161, Laws of Utah 1987
- 31A-12-107, as last amended by Chapter 71, Laws of Utah 2002
- 31A-22-305, as last amended by Chapters 76 and 218, Laws of Utah 2003
- 63-30a-3, as last amended by Chapter 30, Laws of Utah 1987
- 63-56-59, as last amended by Chapter 178, Laws of Utah 2002
- 76-6-513, as last amended by Chapter 291, Laws of Utah 1995
- 78-3a-113 (Superseded 07/01/04), as renumbered and amended by Chapter 365, Laws of Utah 1997
- 78-3a-113 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003
- 78-3a-114 (Superseded 07/01/04), as renumbered and amended by Chapter 365, Laws of Utah 1997
- 78-3a-114 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003
- 78-3a-118 (Superseded 07/01/04), as last amended by Chapters 68, 176, 195 and 278, Laws of Utah 2003
- 78-3a-118 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003
- 78-17-3, as enacted by Chapter 143, Laws of Utah 1986
- 78-19-1, as enacted by Chapter 4, Laws of Utah 1990

**ENACTS:**

- 63-30d-101, Utah Code Annotated 1953
- 63-30d-102, Utah Code Annotated 1953
- 63-30d-201, Utah Code Annotated 1953
- 63-30d-202, Utah Code Annotated 1953
- 63-30d-301, Utah Code Annotated 1953
- 63-30d-302, Utah Code Annotated 1953
- 63-30d-401, Utah Code Annotated 1953
- 63-30d-402, Utah Code Annotated 1953
- 63-30d-403, Utah Code Annotated 1953
- 63-30d-501, Utah Code Annotated 1953
- 63-30d-502, Utah Code Annotated 1953
- 63-30d-601, Utah Code Annotated 1953
- 63-30d-602, Utah Code Annotated 1953
- 63-30d-603, Utah Code Annotated 1953
- 63-30d-604, Utah Code Annotated 1953
- 63-30d-701, Utah Code Annotated 1953
- 63-30d-702, Utah Code Annotated 1953
- 63-30d-703, Utah Code Annotated 1953
- 63-30d-704, Utah Code Annotated 1953
- 63-30d-801, Utah Code Annotated 1953
- 63-30d-802, Utah Code Annotated 1953
- 63-30d-803, Utah Code Annotated 1953
- 63-30d-804, Utah Code Annotated 1953
- 63-30d-805, Utah Code Annotated 1953
- 63-30d-901, Utah Code Annotated 1953

63-30d-902, Utah Code Annotated 1953  
 63-30d-903, Utah Code Annotated 1953  
 63-30d-904, Utah Code Annotated 1953

**REPEALS:**

63-30-1, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-2, as last amended by Chapter 224, Laws of Utah 2000  
 63-30-3, as last amended by Chapter 3, Laws of Utah 2003  
 63-30-4, as last amended by Chapter 206, Laws of Utah 2002  
 63-30-5, as last amended by Chapter 251, Laws of Utah 1991  
 63-30-6, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-7, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000  
 63-30-8, as last amended by Chapter 76, Laws of Utah 1991  
 63-30-9, as last amended by Chapter 76, Laws of Utah 1991  
 63-30-10, as last amended by Chapter 185, Laws of Utah 2001  
 63-30-10.5, as last amended by Chapter 76, Laws of Utah 1991  
 63-30-10.6, as last amended by Chapter 280, Laws of Utah 1992  
 63-30-11, as last amended by Chapter 157, Laws of Utah 2000  
 63-30-12, as last amended by Chapter 164, Laws of Utah 1998  
 63-30-13, as last amended by Chapter 164, Laws of Utah 1998  
 63-30-14, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-15, as last amended by Chapter 75, Laws of Utah 1987  
 63-30-16, as last amended by Chapter 166, Laws of Utah 1999  
 63-30-17, as last amended by Chapter 129, Laws of Utah 1983  
 63-30-18, as last amended by Chapter 313, Laws of Utah 1995  
 63-30-19, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-20, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-22, as last amended by Chapter 67, Laws of Utah 1991  
 63-30-23, as last amended by Chapter 75, Laws of Utah 1987  
 63-30-24, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-25, as enacted by Chapter 139, Laws of Utah 1965  
 63-30-26, as last amended by Chapter 129, Laws of Utah 1983  
 63-30-27, as last amended by Chapter 3, Laws of Utah 1988  
 63-30-28, as last amended by Chapter 203, Laws of Utah 1991  
 63-30-29.5, as last amended by Chapter 242, Laws of Utah 1985  
 63-30-31, as last amended by Chapter 129, Laws of Utah 1983

63-30-32, as last amended by Chapter 129, Laws of Utah 1983  
 63-30-33, as last amended by Chapter 76, Laws of Utah 1991  
 63-30-34, as last amended by Chapter 157, Laws of Utah 2000  
 63-30-35, as last amended by Chapter 97, Laws of Utah 1990  
 63-30-36, as last amended by Chapter 206, Laws of Utah 2002  
 63-30-37, as last amended by Chapter 30, Laws of Utah 1987  
 63-30-38, as enacted by Chapter 131, Laws of Utah 1983  
 78-60-101, as enacted by Chapter 180, Laws of Utah 2003  
 78-60-102, as enacted by Chapter 180, Laws of Utah 2003  
 78-60-103, as enacted by Chapter 180, Laws of Utah 2003

**Uncodified Material Affected:**

ENACTS UNCODIFIED MATERIAL

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

**Section 1. Section 7-2-9 is amended to read:****7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment of receiver -- Review of actions.**

(1) Upon taking possession of the institution, the commissioner may appoint a receiver to perform the duties of the commissioner. Subject to any limitations, conditions, or requirements specified by the commissioner and approved by the court, a receiver shall have all the powers and duties of the commissioner under this chapter and the laws of this state to act as a conservator, receiver, or liquidator of the institution. Actions of the commissioner in appointing a receiver shall be subject to review only as provided in Section 7-2-2.

(2) (a) If the deposits of the institution are to any extent insured by a federal deposit insurance agency, the commissioner may appoint that agency as receiver. After receiving notice in writing of the acceptance of the appointment, the commissioner shall file a certificate of appointment in his office and with the clerk of the district court. After the filing of the certificate, the possession of all assets, business, and property of the institution is considered transferred from the institution and the commissioner to the agency, and title to all assets, business, and property of the institution is vested in the agency without the execution of any instruments of conveyance, assignment, transfer, or endorsement.

(b) If a federal deposit insurance agency accepts an appointment as receiver, it has all the powers and privileges provided by the laws of this state and the United States with respect to the conservatorship, receivership, or liquidation of an institution and the rights of its depositors, and other creditors, including authority to make an agreement for the purchase of assets and assumption of deposit and other liabilities by another depository institution or take other action

authorized by Title 12 of the United States Code to maintain the stability of the banking system. Such action by a federal deposit insurance agency may be taken upon approval by the court, with or without prior notice. Such actions or agreements may be disapproved, amended, or rescinded only upon a finding by the court that the decisions or actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of any conflict between state and federal law, including provisions for adjudicating claims against the institution or receiver, the receiver shall comply with the federal law and any resulting violation of state law shall not by itself constitute grounds for the court to disapprove the actions of the receiver or impose any penalty for such violation.

(c) The commissioner or any receiver appointed by him shall possess all the rights and claims of the institution against any person whose breach of fiduciary duty or violations of the laws of this state or the United States applicable to depository institutions may have caused or contributed to a condition which resulted in any loss incurred by the institution or to its assets in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary duty includes those duties and standards applicable under statutes and laws of this state and the United States to a director, officer, or other party employed by or rendering professional services to a depository institution whose deposits are insured by a federal deposit insurance agency. Upon taking possession of an institution, no person other than the commissioner or receiver shall have standing to assert any such right or claim of the institution, including its depositors, creditors, or shareholders unless the right or claim has been abandoned by the commissioner or receiver with approval of the court. Any judgment based on the rights and claims of the commissioner or receiver shall have priority in payment from the assets of the judgment debtors.

(d) For the purposes of this section, the term "federal deposit insurance agency" shall include the Federal Deposit Insurance Corporation, the National Credit Union Administration and any departments thereof or successors thereto, and any other federal agency authorized by federal law to act as a conservator, receiver, and liquidator of a federally insured depository institution, including the Resolution Trust Corporation and any department thereof or successor thereto.

(3) The receiver may employ assistants, agents, accountants, and legal counsel. If the receiver is not a federal deposit insurance agency, the compensation to be paid such assistants, agents, accountants, and legal counsel shall be approved by the commissioner. All expenses incident to the receivership shall be paid out of the assets of the institution. If a receiver is not a federal deposit insurance agency, the receiver and any assistants and agents shall provide bond or other security specified by the commissioner and approved by the court for the faithful discharge of all duties and responsibilities in connection with the receivership including the accounting for money received and paid. The cost of the bond shall be paid from the

assets of the institution. Suit may be maintained on the bond by the commissioner or by any person injured by a breach of the condition of the bond.

(4) (a) Upon the appointment of a receiver for an institution in possession pursuant to this chapter, the commissioner and the department are exempt from liability or damages for any act or omission of any receiver appointed pursuant to this section.

(b) This section does not limit the right of the commissioner to prescribe and enforce rules regulating a receiver in carrying out its duties with respect to an institution subject to the jurisdiction of the department.

(c) Any act or omission of the commissioner or of any federal deposit insurance agency as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the exercise of a discretionary function within the meaning of Section [63-30-10] 63-30d-301 of the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

(5) Actions, decisions, or agreements of a receiver under this chapter, other than allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review only as follows:

(a) A petition for review shall be filed with the court having jurisdiction under Section 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or its terms are filed with the court.

(b) The petition shall state in simple, concise, and direct terms the facts and principles of law upon which the petitioner claims the act, decision, or agreement of the receiver was or would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may be damaged thereby. The court shall dismiss any petition which fails to allege that the petitioner would be directly injured or damaged by the act, decision, or agreement which is the subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties with respect to the allegations set forth in a petition or response.

(c) The receiver shall have 30 days after service of the petition within which to respond.

(d) All further proceedings are to be conducted in accordance with the Utah Rules of Civil Procedure.

(6) All notices required under this section shall be made in accordance with the Utah Rules of Civil Procedure and served upon the attorney general of the state of Utah, the commissioner of financial institutions, the receiver of the institution appointed under this chapter, and upon the designated representative of any party in interest who requests in writing such notice.

**Section 2. Section 17-50-401 is amended to read:**

**17-50-401. Review of claims by county executive -- Auditor review -- Attorney review -- Claim requirements -- Approval or disapproval of claim.**

(1) Subject to Subsection (3), each county executive shall review each claim against the

county and disapprove or, if payment appears to the county executive to be just, lawful, and properly due and owing, approve the claim.

(2) Upon receiving a notice of claim under Section [63-30-11] 63-30d-401, the county clerk shall deliver the notice of claim to the county executive.

(3) (a) The county executive shall forward all claims regarding liability to the county attorney, or, in a county that has a district attorney but not a county attorney, to the district attorney for the attorney's review and recommendation to the county executive regarding liability and payment.

(b) Except as provided in Section 17-50-405, the county executive shall forward all claims requesting payment for goods or services to the county auditor for the auditor's review and recommendation to the county executive.

(4) Each claim for goods or services against a county shall:

(a) itemize the claim, giving applicable names, dates, and particular goods provided or services rendered;

(b) if the claim is for service of process, state the character of process served, upon whom served, the number of days engaged, and the number of miles traveled;

(c) be duly substantiated as to its correctness and as to the fact that it is justly due;

(d) if the claim is for materials furnished, state to whom the materials were furnished, by whom ordered, and the quantity and price agreed upon; and

(e) be presented to the county executive within a year after the last item of the account or credit accrued.

(5) If the county executive refuses to hear or consider a claim because it is not properly made out, the county executive shall cause notice of the refusal to be given to the claimant or the claimant's agent and shall allow a reasonable amount of time for the claim to be properly itemized and substantiated.

(6) Nothing in this section may be construed to modify the requirements of Section [63-30-11] 63-30d-401.

**Section 3. Section 17A-2-1830 is amended to read:**

**17A-2-1830. Limitation of liability.**

(1) The members of the board of trustees, or any person acting in behalf of the board, while acting within the scope of their authority, are not subject to any personal liability resulting from carrying out any of the powers of this part.

(2) The provisions of Section [63-30-36] 63-30d-902 shall apply to members of the board of trustees, officers, employees, authorized volunteers, and agents of the regional service area in connection with any claims, demands, suits,

actions, or proceedings that may be made or brought against any of them arising out of any determination made or actions taken or omitted to be taken in compliance with any obligations under the terms of this part.

(3) The regional service area or any member of the board of trustees, officer, employee, authorized volunteer, or its agent is not liable to any person, for personal injury or property damage or otherwise, arising from the operation of facilities for sports competitions by any person or organization other than the regional service area. Nothing contained in this Subsection (3) shall relieve the regional service area or any person from liability or responsibility for its or their own contracts, conduct, or omissions.

**Section 4. Section 31A-1-301 is amended to read:**

**31A-1-301. Definitions.**

As used in this title, unless otherwise specified:

(1) (a) "Accident and health insurance" means insurance to provide protection against economic losses resulting from:

(i) a medical condition including:

(A) medical care expenses; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) long-term care contracts; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage; or

(D) loss of income coverage.

(c) "Accident and health insurance" does not include workers' compensation insurance.

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) "Administrator" is defined in Subsection (149).

(4) "Adult" means a natural person who has attained the age of at least 18 years.

(5) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of natural persons manages the corporations.

(6) "Agency" means:

(a) a person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization licensed or required to be licensed under Section 31A-23a-301.

(7) "Alien insurer" means an insurer domiciled outside the United States.

(8) "Amendment" means an endorsement to an insurance policy or certificate.

(9) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more natural persons if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(10) "Application" means a document:

(a) completed by an applicant to provide information about the risk to be insured; and

(b) that contains information that is used by the insurer to:

(i) evaluate risk; and

(ii) decide whether to:

(A) insure the risk under:

(I) the coverages as originally offered; or

(II) a modification of the coverage as originally offered; or

(B) decline to insure the risk.

(11) "Articles" or "articles of incorporation" means the original articles, special laws, charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and other constitutive documents for trusts and other entities that are not corporations, and amendments to any of these.

(12) "Bail bond insurance" means a guarantee that a person will attend court when required, or will obey the orders or judgment of the court, as a condition to the release of that person from confinement.

(13) "Binder" is defined in Section 31A-21-102.

(14) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated.

(15) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(16) "Business of insurance" is defined in Subsection (80).

(17) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these subsections are applicable by reference under:

(a) Section 31A-7-201;

(b) Section 31A-8-205; or

(c) Subsection 31A-9-205(2).

(18) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated and includes comparable rules for trusts and other entities that are not corporations.

(19) "Captive insurance company" means:

(a) an insurance company:

(i) owned by another organization; and

(ii) whose exclusive purpose is to insure risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization:

(i) owned by the insureds; and

(ii) whose exclusive purpose is to insure risks of:

(A) member organizations;

(B) group members; and

(C) affiliates of:

(I) member organizations; or

(II) group members.

(20) "Casualty insurance" means liability insurance as defined in Subsection (90).

(21) "Certificate" means evidence of insurance given to:

(a) an insured under a group insurance policy; or

(b) a third party.

(22) "Certificate of authority" is included within the term "license."

(23) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of benefits according to the terms of an insurance policy.

(24) "Claims-made coverage" means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

(25) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection (25)(a) apply to the equivalent supervisory official of another jurisdiction.

(26) (a) "Continuing care insurance" means insurance that:

- (i) provides board and lodging;
- (ii) provides one or more of the following services:
  - (A) personal services;
  - (B) nursing services;
  - (C) medical services; or
  - (D) other health-related services; and
- (iii) provides the coverage described in Subsection (26)(a)(i) under an agreement effective:

- (A) for the life of the insured; or
- (B) for a period in excess of one year.

(b) Insurance is continuing care insurance regardless of whether or not the board and lodging are provided at the same location as the services described in Subsection (26)(a)(ii).

(27) (a) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be:

- (i) by contract;
- (ii) by common management;
- (iii) through the ownership of voting securities; or
- (iv) by a means other than those described in Subsections (27)(a)(i) through (iii).

(b) There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position.

(c) A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement.

(d) There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person.

(28) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a producer.

(29) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(30) "Controlling producer" means a producer who directly or indirectly controls an insurer.

(31) (a) "Corporation" means insurance corporation, except when referring to:

(i) a corporation doing business as an insurance producer, limited line producer, consultant, managing general agent, reinsurance

intermediary, third party administrator, or adjuster under:

- (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;
- (B) Chapter 25, Third Party Administrators; and
- (C) Chapter 26, Insurance Adjusters; or

(ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance Holding Companies.

(b) "Stock corporation" means stock insurance corporation.

(c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

(32) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

(33) (a) "Credit insurance" means insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation.

(b) "Credit insurance" includes:

- (i) credit accident and health insurance;
- (ii) credit life insurance;
- (iii) credit property insurance;
- (iv) credit unemployment insurance;
- (v) guaranteed automobile protection insurance;
- (vi) involuntary unemployment insurance;
- (vii) mortgage accident and health insurance;
- (viii) mortgage guaranty insurance; and
- (ix) mortgage life insurance.

(34) "Credit life insurance" means insurance on the life of a debtor in connection with an extension of credit that pays a person if the debtor dies.

(35) "Credit property insurance" means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that protects the property until the debt is paid.

(36) "Credit unemployment insurance" means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that provides indemnity if the debtor is unemployed for payments coming due on a:

- (i) specific loan; or
- (ii) credit transaction.

(37) "Creditable coverage" is as defined in 45 C.F.R. 146.113(a).

(38) "Creditor" means a person, including an insured, having any claim, whether:

- (a) matured;
- (b) unmatured;
- (c) liquidated;
- (d) unliquidated;
- (e) secured;
- (f) unsecured;
- (g) absolute;
- (h) fixed; or
- (i) contingent.

(39) (a) "Customer service representative" means a person that provides insurance services and insurance product information:

- (i) for the customer service representative's producer or consultant employer; and
- (ii) to the customer service representative's employer's customer, client, or organization.

(b) A customer service representative may only operate within the scope of authority of the customer service representative's producer or consultant employer.

(40) "Deadline" means the final date or time:

- (a) imposed by:
  - (i) statute;
  - (ii) rule; or
  - (iii) order; and

(b) by which a required filing or payment must be received by the department.

(41) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute so provides, the condition precedent may be the commissioner's failure to take a specific action.

(42) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

(43) "Department" means the Insurance Department.

(44) "Director" means a member of the board of directors of a corporation.

(45) "Disability" means a physiological or psychological condition that partially or totally limits an individual's ability to:

- (a) perform the duties of:
  - (i) that individual's occupation; or

(ii) any occupation for which the individual is reasonably suited by education, training, or experience; or

(b) perform two or more of the following basic activities of daily living:

- (i) eating;
- (ii) toileting;
- (iii) transferring;
- (iv) bathing; or
- (v) dressing.

(46) "Disability income insurance" is defined in Subsection (71).

(47) "Domestic insurer" means an insurer organized under the laws of this state.

(48) "Domiciliary state" means the state in which an insurer:

- (a) is incorporated;
- (b) is organized; or
- (c) in the case of an alien insurer, enters into the United States.

(49) (a) "Eligible employee" means:

- (i) an employee who:
  - (A) works on a full-time basis; and
  - (B) has a normal work week of 30 or more hours;
- or
- (ii) a person described in Subsection (49)(b).

(b) "Eligible employee" includes, if the individual is included under a health benefit plan of a small employer:

- (i) a sole proprietor;
- (ii) a partner in a partnership; or
- (iii) an independent contractor.

(c) "Eligible employee" does not include, unless eligible under Subsection (49)(b):

- (i) an individual who works on a temporary or substitute basis for a small employer;
- (ii) an employer's spouse; or
- (iii) a dependent of an employer.

(50) "Employee" means any individual employed by an employer.

(51) "Employee benefits" means one or more benefits or services provided to:

- (a) employees; or
- (b) dependents of employees.

(52) (a) "Employee welfare fund" means a fund:

- (i) established or maintained, whether directly or through trustees, by:
  - (A) one or more employers;

(B) one or more labor organizations; or  
 (C) a combination of employers and labor organizations; and

(ii) that provides employee benefits paid or contracted to be paid, other than income from investments of the fund, by or on behalf of an employer doing business in this state or for the benefit of any person employed in this state.

(b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax revenues.

(53) "Endorsement" means a written agreement attached to a policy or certificate to modify one or more of the provisions of the policy or certificate.

(54) (a) "Escrow" means:

(i) a real estate settlement or real estate closing conducted by a third party pursuant to the requirements of a written agreement between the parties in a real estate transaction; or

(ii) a settlement or closing involving:

(A) a mobile home;

(B) a grazing right;

(C) a water right; or

(D) other personal property authorized by the commissioner.

(b) "Escrow" includes the act of conducting a:

(i) real estate settlement; or

(ii) real estate closing.

(55) "Excludes" is not exhaustive and does not mean that other things are not also excluded. The items listed are representative examples for use in interpretation of this title.

(56) "Expense reimbursement insurance" means insurance:

(a) written to provide payments for expenses relating to hospital confinements resulting from illness or injury; and

(b) written:

(i) as a daily limit for a specific number of days in a hospital; and

(ii) to have a one or two day waiting period following a hospitalization.

(57) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(58) (a) "Filed" means that a filing is:

(i) submitted to the department as required by and in accordance with any applicable statute, rule, or filing order;

(ii) received by the department within the time period provided in the applicable statute, rule, or filing order; and

(iii) accompanied by the appropriate fee in accordance with:

(A) Section 31A-3-103; or

(B) rule.

(b) "Filed" does not include a filing that is rejected by the department because it is not submitted in accordance with Subsection (58)(a).

(59) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application; or

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application; or

(n) an advertisement.

(60) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay claims submitted to it by the insured for the insured's losses.

(61) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

(62) (a) "Form" means one of the following prepared for general use:

(i) a policy;

(ii) a certificate;

(iii) an application; or

(iv) an outline of coverage.

(b) "Form" does not include a document specially prepared for use in an individual case.

(63) "Franchise insurance" means individual insurance policies provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

(64) "General lines of authority" include:

(a) the general lines of insurance in Subsection (65);

(b) title insurance under one of the following sublines of authority:

(i) search, including authority to act as a title marketing representative;

(ii) escrow, including authority to act as a title marketing representative;

(iii) search and escrow, including authority to act as a title marketing representative; and

(iv) title marketing representative only;

(c) surplus lines;

(d) workers' compensation; and

(e) any other line of insurance that the commissioner considers necessary to recognize in the public interest.

(65) "General lines of insurance" include:

(a) accident and health;

(b) casualty;

(c) life;

(d) personal lines;

(e) property; and

(f) variable contracts, including variable life and annuity.

(66) "Group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care:

(a) (i) to employees; or

(ii) to a dependent of an employee; and

(b) (i) directly;

(ii) through insurance reimbursement; or

(iii) through any other method.

(67) "Guaranteed automobile protection insurance" means insurance offered in connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss.

(68) "Health benefit plan" means a policy or certificate for health care insurance, except that health benefit plan does not include coverage:

(a) solely for:

(i) accident;

(ii) dental;

(iii) vision;

(iv) Medicare supplement;

(v) long-term care; or

(vi) income replacement; or

(b) that is:

(i) offered and marketed as supplemental health insurance;

(ii) not offered or marketed as a substitute for:

(A) hospital or medical expense insurance; or

(B) major medical expense insurance; and

(iii) solely for:

(A) a specified disease;

(B) hospital confinement indemnity; or

(C) limited benefit plan.

(69) "Health care" means any of the following intended for use in the diagnosis, treatment, mitigation, or prevention of a human ailment or impairment:

(a) professional services;

(b) personal services;

(c) facilities;

(d) equipment;

(e) devices;

(f) supplies; or

(g) medicine.

(70) (a) "Health care insurance" or "health insurance" means insurance providing:

(i) health care benefits; or

(ii) payment of incurred health care expenses.

(b) "Health care insurance" or "health insurance" does not include accident and health insurance providing benefits for:

(i) replacement of income;

(ii) short-term accident;

(iii) fixed indemnity;

(iv) credit accident and health;

(v) supplements to liability;

(vi) workers' compensation;

(vii) automobile medical payment;

(viii) no-fault automobile;

(ix) equivalent self-insurance; or

(x) any type of accident and health insurance coverage that is a part of or attached to another type of policy.

(71) "Income replacement insurance" or "disability income insurance" means insurance written to provide payments to replace income lost from accident or sickness.

(72) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

(73) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

(74) "Independently procured insurance" means insurance procured under Section 31A-15-104.

(75) "Individual" means a natural person.

(76) "Inland marine insurance" includes insurance covering:

- (a) property in transit on or over land;
- (b) property in transit over water by means other than boat or ship;
- (c) bailee liability;
- (d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and

(e) personal and commercial property floaters.

(77) "Insolvency" means that:

(a) an insurer is unable to pay its debts or meet its obligations as they mature;

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or

(c) an insurer is determined to be hazardous under this title.

(78) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

(i) risk distributing arrangements providing for compensation or replacement for damages or loss through the provision of services or benefits in kind;

(ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(iii) plans in which the risk does not rest upon the person who makes the arrangements, but with a class of persons who have agreed to share it.

(79) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

(80) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection (70), by organizations that are or should be licensed under this title;

(b) providing benefits to employees in the event of contingencies not within the control of the employees, in which the employees are entitled to the benefits as a right, which benefits may be provided either:

(i) by single employers or by multiple employer groups; or

(ii) through trusts, associations, or other entities;

(c) providing annuities, including those issued in return for gifts, except those provided by persons specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of motor clubs as outlined in Subsection (106);

(e) providing other persons with insurance as defined in Subsection (78);

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, any contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; and

(h) doing, or proposing to do, any business in substance equivalent to Subsections (80)(a) through (g) in a manner designed to evade the provisions of this title.

(81) "Insurance consultant" or "consultant" means a person who:

(a) advises other persons about insurance needs and coverages;

(b) is compensated by the person advised on a basis not directly related to the insurance placed; and

(c) except as provided in Section 31A-23a-501, is not compensated directly or indirectly by an insurer or producer for advice given.

(82) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

(83) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(b) With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:

(i) "producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer; and

(ii) "producer for the insured" means a producer who:

(A) is compensated directly and only by an insurance customer or an insured; and

(B) receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating any product of that insurer to an insurance customer or insured.

(84) (a) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy and includes:

(i) policyholders;

(ii) subscribers;

(iii) members; and

(iv) beneficiaries.

(b) The definition in Subsection (84)(a):

(i) applies only to this title; and

(ii) does not define the meaning of this word as used in insurance policies or certificates.

(85) (a) (i) "Insurer" means any person doing an insurance business as a principal including:

(A) fraternal benefit societies;

(B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and (3);

(C) motor clubs;

(D) employee welfare plans; and

(E) any person purporting or intending to do an insurance business as a principal on that person's own account.

(ii) "Insurer" does not include a governmental entity[, as defined in Section 63-30-2,] to the extent it is engaged in the activities described in Section 31A-12-107.

(b) "Admitted insurer" is defined in Subsection (153)(b).

(c) "Alien insurer" is defined in Subsection (7).

(d) "Authorized insurer" is defined in Subsection (153)(b).

(e) "Domestic insurer" is defined in Subsection (47).

(f) "Foreign insurer" is defined in Subsection (61).

(g) "Nonadmitted insurer" is defined in Subsection (153)(a).

(h) "Unauthorized insurer" is defined in Subsection (153)(a).

(86) "Interinsurance exchange" is defined in Subsection (135).

(87) "Involuntary unemployment insurance" means insurance:

(a) offered in connection with an extension of credit;

(b) that provides indemnity if the debtor is involuntarily unemployed for payments coming due on a:

(i) specific loan; or

(ii) credit transaction.

(88) "Large employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

(a) employed an average of at least 51 eligible employees on each business day during the preceding calendar year; and

(b) employs at least two employees on the first day of the plan year.

(89) (a) Except for a retainer contract or legal assistance described in Section 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for specified legal expenses.

(b) "Legal expense insurance" includes arrangements that create reasonable expectations of enforceable rights.

(c) "Legal expense insurance" does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.

(90) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of any human being, or for damage to property, exclusive of the coverages under:

(A) Subsection (100) for medical malpractice insurance;

(B) Subsection (127) for professional liability insurance; and

(C) Subsection (157) for workers' compensation insurance;

(ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured who are injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings, exclusive of the coverages under:

(A) Subsection (100) for medical malpractice insurance;

(B) Subsection (127) for professional liability insurance; and

(C) Subsection (157) for workers' compensation insurance;

(iii) for loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(iv) for loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings; or

(v) for other loss or damage properly the subject of insurance not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

(b) "Liability insurance" includes:

(i) vehicle liability insurance as defined in Subsection (155);

(ii) residential dwelling liability insurance as defined in Subsection (138); and

(iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and apparatus of any kind when done in connection with insurance on them.

(91) (a) "License" means the authorization issued by the commissioner to engage in some activity that is part of or related to the insurance business.

(b) "License" includes certificates of authority issued to insurers.

(92) (a) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life.

(b) The business of life insurance includes:

- (i) granting death benefits;
- (ii) granting annuity benefits;
- (iii) granting endowment benefits;

(iv) granting additional benefits in the event of death by accident;

(v) granting additional benefits to safeguard the policy against lapse in the event of disability; and

(vi) providing optional methods of settlement of proceeds.

(93) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

(94) "Limited line credit insurance" includes the following forms of insurance:

- (a) credit life;
- (b) credit accident and health;
- (c) credit property;
- (d) credit unemployment;
- (e) involuntary unemployment;
- (f) mortgage life;
- (g) mortgage guaranty;
- (h) mortgage accident and health;
- (i) guaranteed automobile protection; and

(j) any other form of insurance offered in connection with an extension of credit that:

(i) is limited to partially or wholly extinguishing the credit obligation; and

(ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.

(95) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(96) "Limited line insurance" includes:

- (a) bail bond;
- (b) limited line credit insurance;
- (c) legal expense insurance;
- (d) motor club insurance;
- (e) rental car-related insurance;

(f) travel insurance; and

(g) any other form of limited insurance that the commissioner determines by rule should be designated a form of limited line insurance.

(97) "Limited lines authority" includes:

(a) the lines of insurance listed in Subsection (96); and

(b) a customer service representative.

(98) "Limited lines producer" means a person who sells, solicits, or negotiates limited lines insurance.

(99) (a) "Long-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designated to provide coverage:

(i) in a setting other than an acute care unit of a hospital;

(ii) for not less than 12 consecutive months for each covered person on the basis of:

- (A) expenses incurred;
- (B) indemnity;
- (C) prepayment; or
- (D) another method;

(iii) for one or more necessary or medically necessary services that are:

- (A) diagnostic;
- (B) preventative;
- (C) therapeutic;
- (D) rehabilitative;
- (E) maintenance; or
- (F) personal care; and

(iv) that may be issued by:

- (A) an insurer;
- (B) a fraternal benefit society;
- (C) (I) a nonprofit health hospital; and
- (II) a medical service corporation;
- (D) a prepaid health plan;
- (E) a health maintenance organization; or

(F) an entity similar to the entities described in Subsections (99)(a)(iv)(A) through (E) to the extent that the entity is otherwise authorized to issue life or health care insurance.

(b) "Long-term care insurance" includes:

(i) any of the following that provide directly or supplement long-term care insurance:

- (A) a group or individual annuity or rider; or
- (B) a life insurance policy or rider;

(ii) a policy or rider that provides for payment of benefits based on:

- (A) cognitive impairment; or

(B) functional capacity; or

(iii) a qualified long-term care insurance contract.

(c) "Long-term care insurance" does not include:

(i) a policy that is offered primarily to provide basic Medicare supplement coverage;

(ii) basic hospital expense coverage;

(iii) basic medical/surgical expense coverage;

(iv) hospital confinement indemnity coverage;

(v) major medical expense coverage;

(vi) income replacement or related asset-protection coverage;

(vii) accident only coverage;

(viii) coverage for a specified:

(A) disease; or

(B) accident;

(ix) limited benefit health coverage; or

(x) a life insurance policy that accelerates the death benefit to provide the option of a lump sum payment:

(A) if the following are not conditioned on the receipt of long-term care:

(I) benefits; or

(II) eligibility; and

(B) the coverage is for one or more the following qualifying events:

(I) terminal illness;

(II) medical conditions requiring extraordinary medical intervention; or

(III) permanent institutional confinement.

(100) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of medical services other than the practice and provision of dental services.

(101) "Member" means a person having membership rights in an insurance corporation.

(102) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute.

(103) "Mortgage accident and health insurance" means insurance offered in connection with an extension of credit that provides indemnity for payments coming due on a mortgage while the debtor is disabled.

(104) "Mortgage guaranty insurance" means surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.

(105) "Mortgage life insurance" means insurance on the life of a debtor in connection with an extension of credit that pays if the debtor dies.

(106) "Motor club" means a person:

(a) licensed under:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

(b) that promises for an advance consideration to provide for a stated period of time:

(i) legal services under Subsection 31A-11-102(1)(b);

(ii) bail services under Subsection 31A-11-102(1)(c); or

(iii) trip reimbursement, towing services, emergency road services, stolen automobile services, a combination of these services, or any other services given in Subsections 31A-11-102(1)(b) through (f).

(107) "Mutual" means mutual insurance corporation.

(108) "Network plan" means health care insurance:

(a) that is issued by an insurer; and

(b) under which the financing and delivery of medical care is provided, in whole or in part, through a defined set of providers under contract with the insurer, including the financing and delivery of items paid for as medical care.

(109) "Nonparticipating" means a plan of insurance under which the insured is not entitled to receive dividends representing shares of the surplus of the insurer.

(110) "Ocean marine insurance" means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

(111) "Order" means an order of the commissioner.

(112) "Outline of coverage" means a summary that explains an accident and health insurance policy.

(113) "Participating" means a plan of insurance under which the insured is entitled to receive dividends representing shares of the surplus of the insurer.

(114) "Participation," as used in a health benefit plan, means a requirement relating to the minimum percentage of eligible employees that must be enrolled in relation to the total number of eligible employees of an employer reduced by each eligible employee who voluntarily declines coverage under the plan because the employee has other health care insurance coverage.

(115) "Person" includes an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

(116) "Personal lines insurance" means property and casualty insurance coverage sold for primarily noncommercial purposes to:

- (a) individuals; and
- (b) families.

(117) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

(118) "Plan year" means:

- (a) the year that is designated as the plan year in:
  - (i) the plan document of a group health plan; or
  - (ii) a summary plan description of a group health plan;
- (b) if the plan document or summary plan description does not designate a plan year or there is no plan document or summary plan description:
  - (i) the year used to determine deductibles or limits;
  - (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis; or
  - (iii) the employer's taxable year if:
    - (A) the plan does not impose deductibles or limits on a yearly basis; and
    - (B) (I) the plan is not insured; or
    - (II) the insurance policy is not renewed on an annual basis; or
  - (c) in a case not described in Subsection (118)(a) or (b), the calendar year.

(119) (a) (i) "Policy" means any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract.

- (ii) "Policy" includes a service contract issued by:
  - (A) a motor club under Chapter 11, Motor Clubs;
  - (B) a service contract provided under Chapter 6a, Service Contracts; and

(C) a corporation licensed under:

(I) Chapter 7, Nonprofit Health Service Insurance Corporations; or

(II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(iii) "Policy" does not include:

(A) a certificate under a group insurance contract; or

(B) a document that does not purport to have legal effect.

(b) (i) "Group insurance policy" means a policy covering a group of persons that is issued to a policyholder on behalf of the group, for the benefit of group members who are selected under procedures defined in the policy or in agreements which are collateral to the policy.

(ii) A group insurance policy may include members of the policyholder's family or dependents.

(c) "Blanket insurance policy" means a group policy covering classes of persons without individual underwriting, where the persons insured are determined by definition of the class with or without designating the persons covered.

(120) "Policyholder" means the person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

(121) "Policy illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

(122) "Policy summary" means a synopsis describing the elements of a life insurance policy.

(123) "Preexisting condition," in connection with a health benefit plan, means:

(a) a condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the earlier of:

- (i) the enrollment date; or
- (ii) the effective date of coverage; or

(b) for an individual insurance policy, a pregnancy existing on the effective date of coverage.

(124) (a) "Premium" means the monetary consideration for an insurance policy, and includes assessments, membership fees, required contributions, or monetary consideration, however designated.

(b) Consideration paid to third party administrators for their services is not "premium," though amounts paid by third party administrators to insurers for insurance on the risks administered by the third party administrators are "premium."

(125) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203(3).

(126) "Proceedings" includes actions and special statutory proceedings.

(127) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of any professional services.

(128) "Property insurance" means insurance against loss or damage to real or personal property of every kind and any interest in that property, from all hazards or causes, and against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages, but excluding inland marine insurance and ocean marine insurance as defined under Subsections (76) and (110).

(129) "Qualified long-term care insurance contract" or "federally tax qualified long-term care insurance contract" means:

(a) an individual or group insurance contract that meets the requirements of Section 7702B(b), Internal Revenue Code; or

(b) the portion of a life insurance contract that provides long-term care insurance:

(i) (A) by rider; or

(B) as a part of the contract; and

(ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

(130) "Qualified United States financial institution" means an institution that:

(a) is:

(i) organized under the laws of the United States or any state; or

(ii) in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

(b) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner as determined by:

(i) the commissioner by rule; or

(ii) the Securities Valuation Office of the National Association of Insurance Commissioners.

(131) (a) "Rate" means:

(i) the cost of a given unit of insurance; or

(ii) for property-casualty insurance, that cost of insurance per exposure unit either expressed as:

(A) a single number; or

(B) a pure premium rate, adjusted before any application of individual risk variations based on loss or expense considerations to account for the treatment of:

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

(132) (a) Except as provided in Subsection (132)(b), "rate service organization" means any person who assists insurers in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

(i) an employee of an insurer;

(ii) a single insurer or group of insurers under common control;

(iii) a joint underwriting group; or

(iv) a natural person serving as an actuarial or legal consultant.

(133) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

(a) a manual of rates;

(b) classifications;

(c) rate-related underwriting rules; and

(d) rating formulas that describe steps, policies, and procedures for determining initial and renewal policy premiums.

(134) "Received by the department" means:

(a) except as provided in Subsection (134)(b), the date delivered to and stamped received by the department, whether delivered:

(i) in person; or

(ii) electronically; and

(b) if delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:

(i) statute;

(ii) rule; or

(iii) a specific filing order.

(135) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons:

(a) operating through an attorney-in-fact common to all of them; and

(b) exchanging insurance contracts with one another that provide insurance coverage on each other.

(136) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

(a) the insurer transferring the risk as the "ceding insurer"; and

(b) the insurer assuming the risk as the:

(i) "assuming insurer"; or

(ii) "assuming reinsurer."

(137) "Reinsurer" means any person, firm, association, or corporation licensed in this state as an insurer with the authority to assume reinsurance.

(138) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

(139) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a liability assumed under a reinsurance contract.

(140) "Rider" means an endorsement to:

(a) an insurance policy; or

(b) an insurance certificate.

(141) (a) "Security" means any:

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

(vi) certificate of interest or participation in any profit-sharing agreement;

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections (141)(a)(i) through (xiv); or

(xvi) any other interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period; or

(ii) a burial certificate or burial contract.

(142) "Self-insurance" means any arrangement under which a person provides for spreading its own risks by a systematic plan.

(a) Except as provided in this Subsection (142), self-insurance does not include an arrangement under which a number of persons spread their risks among themselves.

(b) Self-insurance does include an arrangement by which a governmental entity[~~as defined in Section 63-30-2,~~] undertakes to indemnify its employees for liability arising out of the employees' employment.

(c) Self-insurance does include an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk which is related to the relationship or employment.

(d) Self-insurance does not include any arrangement with independent contractors.

(143) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

(144) "Short-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance but that provides coverage for less than 12 consecutive months for each covered person.

(145) "Small employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

(a) employed an average of at least two employees but not more than 50 eligible employees on each business day during the preceding calendar year; and

(b) employs at least two employees on the first day of the plan year.

(146) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares

the law of the subsidiary's domicile requires to be owned by directors or others.

(147) Subject to Subsection (78)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from failure of principals to pay or perform their obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

(148) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been designated by the insurer as permanent.

(ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus.

(iii) Except for assessable mutuals, the minimum permanent surplus requirement is essentially the same as the minimum required capital requirement that applies to stock insurers.

(c) "Excess surplus" means:

(i) for life or accident and health insurers, health organizations, and property and casualty insurers as defined in Section 31A-17-601, the lesser of:

(A) that amount of an insurer's or health organization's total adjusted capital, as defined in Subsection (151), that exceeds the product of:

(I) 2.5; and

(II) the sum of the insurer's or health organization's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's or health organization's total adjusted capital, as defined in Subsection (151), that exceeds the product of:

(I) 3.0; and

(II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

(ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

(A) 1.5; and

(B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

(149) "Third party administrator" or "administrator" means any person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering any:

(i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance for which the insurer holds a license in this state; or

(e) a person licensed or exempt from licensing under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, or Chapter 26, Insurance Adjusters, whose activities are limited to those authorized under the license the person holds or for which the person is exempt.

(150) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(151) "Total adjusted capital" means the sum of an insurer's or health organization's statutory capital and surplus as determined in accordance with:

(a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and

(b) any other items provided by the RBC instructions, as RBC instructions is defined in Section 31A-17-601.

(152) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

(153) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:

(i) not holding a valid certificate of authority to do an insurance business in this state; or

(ii) transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer:

(i) holding a valid certificate of authority to do an insurance business in this state; and

(ii) transacting business as authorized by a valid certificate.

(154) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

(155) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle comprehensive and vehicle physical damage coverages under Subsection (128).

(156) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

(157) "Workers' compensation insurance" means:

(a) insurance for indemnification of employers against liability for compensation based on:

- (i) compensable accidental injuries; and
- (ii) occupational disease disability;

(b) employer's liability insurance incidental to workers' compensation insurance and written in connection with it; and

(c) insurance assuring to the persons entitled to workers' compensation benefits the compensation provided by law.

**Section 5. Section 31A-2-306 is amended to read:**

**31A-2-306. Judicial review -- Costs.**

(1) A person aggrieved by a rule or order of the commissioner, or aggrieved by the commissioner's failure to act when he has a duty to act, may obtain judicial review.

(2) The court reviewing agency actions governed by this title shall give priority to those actions and shall hear and determine them promptly.

(3) Costs shall be awarded as in civil cases. If the court finds that the appeal from action or inaction stemmed from the bad faith or malice of the commissioner, the court may award reasonable attorney's fees to the prevailing petitioner. Section [63-30-23] 63-30d-701 applies to the extent the attorney's fees awarded under this subsection exceed \$10,000 for any one appeal.

**Section 6. Section 31A-12-107 is amended to read:**

**31A-12-107. Governmental immunity.**

Notwithstanding any other provision of this title, a governmental entity[, as defined in Section 63-30-2,] is not an insurer for purposes of this title and is not engaged in the business of insurance to the extent that it is:

(1) covering its own liabilities under Title 63, Chapter [30] 30d, Governmental Immunity Act of Utah; or

(2) engaging in other related risk management activities related to the normal course of its activities.

**Section 7. Section 31A-22-305 is amended to read:**

**31A-22-305. Uninsured and underinsured motorist coverage.**

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle:

(i) referred to in the policy; or

(ii) owned by a self-insurer; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii) (A) a motor vehicle covered with lower liability limits than required by Section 31A-22-304; and

(B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified motor vehicle that left the scene of an accident proximately caused by the motor vehicle operator;

(c) a motor vehicle covered by a liability policy, but coverage for an accident is disputed by the liability insurer for more than 60 days or continues to be disputed for more than 60 days; or

(d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of the motor vehicle is declared insolvent by a court of competent jurisdiction; and

(ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of uninsured motorist coverage

shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

- (i) waives the higher coverage;
- (ii) reasonably explains the purpose of uninsured motorist coverage; and

(iii) discloses the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) Self-insurers, including governmental entities, may elect to provide uninsured motorist coverage in an amount that is less than their maximum self-insured retention under Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from the chief financial officer or chief risk officer that declares the:

- (i) self-insured entity's coverage level; and
- (ii) process for filing an uninsured motorist claim.

(d) Uninsured motorist coverage may not be sold with limits that are less than the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(e) The acknowledgment under Subsection (3)(b) continues for that issuer of the uninsured motorist coverage until the insured, in writing, requests different uninsured motorist coverage from the insurer.

(f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure shall be sent to all insureds that carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of uninsured motorist coverage.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) (i) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

(ii) This coverage is secondary to any other insurance covering an injured covered person.

(c) Uninsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance;

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole;

(v) may not be collected for bodily injury or death sustained by a person:

(A) while committing a violation of Section 41-1a-1314;

(B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Section 41-1a-1314; or

(C) while committing a felony; and

(vi) notwithstanding Subsection (4)(c)(v), may be recovered:

(A) for a person under 18 years of age who is injured within the scope of Subsection (4)(c)(v) but limited to medical and funeral expenses; or

(B) by a law enforcement officer as defined in Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.

(d) As used in this Subsection (4): (i) ~~"Governmental entity" has the same meaning as under Section 63-30-2.~~ (ii) ~~"Motor", "motor vehicle"~~ has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the motor vehicle occupied by the covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) (a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine

the limit of insurance coverage available to an injured person for any one accident.

(b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one motor vehicle that the covered person is the named insured or an insured family member.

(iii) This coverage shall be in addition to the coverage on the motor vehicle the covered person is occupying.

(iv) Neither the primary nor the secondary coverage may be set off against the other.

(c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy. Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a motor vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any one other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) except as provided in Subsection (7)(c), a covered person injured while occupying or using a motor vehicle that is not owned, leased, or furnished, to the covered person, to the covered person's spouse, or to the covered person's resident parent or resident sibling.

(c) (i) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person is:

(A) a dependent minor of parents who reside in separate households; and

(B) injured while occupying or using a motor vehicle that is not owned, leased, or furnished to the covered person, the covered person's resident parent, or to the covered person's resident sibling.

(ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of the damages that the limit of liability of each parent's policy of uninsured motorist coverage bears to the

total of all uninsured coverage applicable to the accident.

(d) A covered person's recovery under any available policies may not exceed the full amount of damages.

(e) A covered person in Subsection (7)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

(8) (a) As used in this section, "underinsured motor vehicle" includes a motor vehicle, the operation, maintenance, or use of which is covered under a liability policy at the time of an injury-causing occurrence, but which has insufficient liability coverage to compensate fully the injured party for all special and general damages.

(b) The term "underinsured motor vehicle" does not include:

(i) a motor vehicle that is covered under the liability coverage of the same policy that also contains the underinsured motorist coverage;

(ii) an uninsured motor vehicle as defined in Subsection (2); or

(iii) a motor vehicle owned or leased by the named insured, the named insured's spouse, or any dependant of the named insured.

(9) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease, or death.

(ii) A covered person occupying or using a motor vehicle owned, leased, or furnished to the covered person, the covered person's spouse, or covered person's resident relative may recover underinsured benefits only if the motor vehicle is:

(A) described in the policy under which a claim is made; or

(B) a newly acquired or replacement motor vehicle covered under the terms of the policy.

(b) For new policies written on or after January 1, 2001, the limits of underinsured motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) waives the higher coverage;

(ii) reasonably explains the purpose of underinsured motorist coverage; and

(iii) discloses the additional premiums required to purchase underinsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) Self-insurers, including governmental entities, may elect to provide underinsured motorist coverage in an amount that is less than their maximum self-insured retention under Subsections (9)(b) and (9)(g) by issuing a declaratory memorandum or policy statement from the chief financial officer or chief risk officer that declares the:

- (i) self-insured entity's coverage level; and
- (ii) process for filing an underinsured motorist claim.

(d) Underinsured motorist coverage may not be sold with limits that are less than \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any one accident.

(e) The acknowledgment under Subsection (9)(b) continues for that issuer of the underinsured motorist coverage until the insured, in writing, requests different underinsured motorist coverage from the insurer.

(f) The named insured's underinsured motorist coverage, as described in Subsection (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off against the liability coverage of the owner or operator of an underinsured motor vehicle, but shall be added to, combined with, or stacked upon the liability coverage of the owner or operator of the underinsured motor vehicle to determine the limit of coverage available to the injured person.

(g) (i) A named insured may reject underinsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This written rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage and when it would be applicable.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests underinsured motorist coverage from that liability insurer.

(h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure shall be sent to all insureds that carry underinsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(10) (a) (i) Except as provided in this Subsection (10), a covered person injured in a motor vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy.

(ii) The limit of liability for underinsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(iii) Subsection (10)(a)(ii) applies to all persons except a covered person as defined under Subsections (10)(b)(i) and (ii).

(b) (i) Except as provided in Subsection (10)(b)(ii), a covered person injured while occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the covered person, the covered person's spouse, or the covered person's resident parent or resident sibling, may also recover benefits under any one other policy under which they are a covered person.

(ii) (A) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person is:

(I) a dependent minor of parents who reside in separate households; and

(II) injured while occupying or using a motor vehicle that is not owned, leased, or furnished to the covered person, the covered person's resident parent, or the covered person's resident sibling.

(B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the percentage of the damages that the limit of liability of each parent's policy of underinsured motorist coverage bears to the total of all underinsured coverage applicable to the accident.

(iii) A covered person's recovery under any available policies may not exceed the full amount of damages.

(iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(v) The primary and the secondary coverage may not be set off against the other.

(vi) A covered person as defined under Subsection (10)(b)(i) is entitled to the highest limits of underinsured motorist coverage under only one additional policy per household applicable to that covered person as a named insured, spouse, or relative.

(vii) A covered injured person is not barred against making subsequent elections if recovery is unavailable under previous elections.

(c) Underinsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance;

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole;

(v) may not be collected for bodily injury or death sustained by a person:

(A) while committing a violation of Section 41-1a-1314;

(B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Section 41-1a-1314; or

(C) while committing a felony; and

(vi) notwithstanding Subsection (10)(c)(v), may be recovered:

(A) for a person under 18 years of age who is injured within the scope of Subsection (10)(c)(v) but limited to medical and funeral expenses; or

(B) by a law enforcement officer as defined in Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.

(11) The inception of the loss under Subsection 31A-21-313(1) for underinsured motorist claims occurs upon the date of the last liability policy payment.

(12) (a) Within five business days after notification in a manner specified by the department that all liability insurers have tendered their liability policy limits, the underinsured carrier shall either:

(i) waive any subrogation claim the underinsured carrier may have against the person liable for the injuries caused in the accident; or

(ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

(b) If neither option is exercised under Subsection (12)(a), the subrogation claim is deemed to be waived by the underinsured carrier.

(13) Except as otherwise provided in this section, a covered person may seek, subject to the terms and conditions of the policy, additional coverage under any policy:

(a) that provides coverage for damages resulting from motor vehicle accidents; and

(b) that is not required to conform to Section 31A-22-302.

**Section 8. Section 63-30a-3 is amended to read:**

**63-30a-3. Payment of reimbursement of attorneys' fees and court costs.**

(1) A request for reimbursement of attorneys' fees and court costs shall be filed in the manner provided

in Sections ~~63-30-36 and 63-30-37~~ 63-30d-902 and 63-30d-903.

(2) (a) Any reimbursement of attorneys' fees and court costs filed on behalf of an officer or employee of the state shall be paid from funds appropriated to the department or division that employed the officer or employee at the time of the act or omission that gave rise to the indictment or information.

(b) If those funds are unavailable, the reimbursement shall be paid from the General Fund upon approval by the Board of Examiners and legislative appropriation.

**Section 9. Section 63-30d-101 is enacted to read:**

**CHAPTER 30d. GOVERNMENTAL IMMUNITY ACT OF UTAH**

**Part 1. General Provisions**

**63-30d-101. Title, scope, and intent.**

(1) This chapter is known as the "Governmental Immunity Act of Utah."

(2) (a) The waivers and retentions of immunity found in this chapter apply to all functions of government, no matter how labeled.

(b) This single, comprehensive chapter governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee's duties, within the scope of employment, or under color of authority.

**Section 10. Section 63-30d-102 is enacted to read:**

**63-30d-102. Definitions.**

As used in this chapter:

(1) "Claim" means any asserted demand for or cause of action for money or damages, whether arising under the common law, under state constitutional provisions, or under state statutes, against a governmental entity or against an employee in the employee's personal capacity.

(2) (a) "Employee" includes:

(i) a governmental entity's officers, employees, servants, trustees, or commissioners;

(ii) members of a governing body;

(iii) members of a government entity board;

(iv) members of a government entity commission;

(v) members of an advisory body, officers, and employees of a Children's Justice Center created in accordance with Section 67-5b-104;

(vi) student teachers holding a letter of authorization in accordance with Sections 53A-6-103 and 53A-6-104;

(vii) educational aides;

(viii) students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program;

(ix) volunteers as defined by Subsection 67-20-2(3); and

(x) tutors.

(b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or not the individual holding that position receives compensation.

(c) "Employee" does not include an independent contractor.

(3) "Governmental entity" means the state and its political subdivisions as both are defined in this section.

(4) (a) "Governmental function" means each activity, undertaking, or operation of a governmental entity.

(b) "Governmental function" includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.

(c) "Governmental function" includes a governmental entity's failure to act.

(5) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person or estate, that would be actionable if inflicted by a private person or his agent.

(6) "Personal injury" means an injury of any kind other than property damage.

(7) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, special district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

(8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.

(9) "State" means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, Children's Justice Center, or other instrumentality of the state.

(10) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that his conduct will probably result in injury.

**Section 11. Section 63-30d-201 is enacted to read:**

**Part 2. Governmental Immunity --  
Statement, Scope, and Effect.**

**63-30d-201. Immunity of governmental entities from suit.**

(1) Except as may be otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune

from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63-30d-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:

(a) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities.

**Section 12. Section 63-30d-202 is enacted to read:**

**63-30d-202. Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability.**

(1) (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.

(b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.

(c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.

(2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.

(3) (a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.

(b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.

(c) A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the

employee whose act or omission gave rise to the claim, unless:

(i) the employee acted or failed to act through fraud or willful misconduct;

(ii) the injury or damage resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:

(A) with a blood alcohol content equal to or greater by weight than the established legal limit;

(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle;

(iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform his or her job function because of:

(A) the use of alcohol;

(B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or

(C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4; or

(iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section.

(4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:

(a) during the performance of the employee's duties;

(b) within the scope of employment; or

(c) under color of authority.

**Section 13. Section 63-30d-301 is enacted to read:**

**Part 3. Waivers of Immunity**

**63-30d-301. Waivers of immunity -- Exceptions.**

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety

condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63-30d-302(1), as to any action brought under the authority of Article I, Section 22, of the Utah Constitution, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63-30d-302(2), as to any action brought to recover attorneys' fees under Sections 63-2-405 and 63-2-802; or

(f) for actual damages under Title 67, Chapter 21, Utah's Protection of Public Employees Act.

(3) (a) Except as provided in Subsection (3)(b), immunity from suit of each governmental entity is waived as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement.

(b) Immunity is not waived if the injury arises out of, in connection with, or results from:

(i) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) Immunity from suit of each governmental entity is waived as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

(5) Immunity is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or by making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not it is negligent or intentional;

(g) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

(h) the collection of and assessment of taxes;

(i) the activities of the Utah National Guard;

(j) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;

(k) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(l) research or implementation of cloud management or seeding for the clearing of fog;

(m) the management of flood waters, earthquakes, or natural disasters;

(n) the construction, repair, or operation of flood or storm systems;

(o) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

(p) the activities of:

(i) providing emergency medical assistance;

(ii) fighting fire;

(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(iv) emergency evacuations;

(v) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(vi) intervening during dam emergencies;

(q) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

(r) unauthorized access to government records, data, or electronic information systems by any person or entity.

**Section 14. Section 63-30d-302 is enacted to read:**

**63-30d-302. Specific remedies -- "Takings" actions -- Government Records Access and Management Actions.**

(1) In any action brought under the authority of Article I, Section 22, of the Utah Constitution for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation, compensation and damages shall be assessed according to the requirements of Title 78, Chapter 34, Eminent Domain.

(2) (a) Notwithstanding Section 63-30d-401, a notice of claim for attorneys' fees under Subsection 63-30d-301(2)(e) may be filed contemporaneously with a petition for review under Section 63-2-404.

(b) The provisions of Subsection 63-30d-403(1), relating to the governmental entity's response to a claim, and the provisions of 63-30d-601, requiring an undertaking, do not apply to a notice of claim for attorneys' fees filed contemporaneously with a petition for review under Section 63-2-404.

(c) Any other claim under this chapter that is related to a claim for attorneys' fees under Subsection 63-30d-301(2)(e) may be brought contemporaneously with the claim for attorneys' fees or in a subsequent action.

**Section 15. Section 63-30d-401 is enacted to read:**

**Part 4. Notice of Claim Against a Governmental Entity or a Government Employee.**

**63-30d-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability -- Appointment of guardian ad litem.**

(1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:

(i) that the claimant had a claim against the governmental entity or its employee; and

(ii) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of

the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as they are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63-30d-202(3)(c), the name of the employee.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered by hand or by mail according to the requirements of Section 68-3-8.5 to the office of:

(A) the city recorder or town clerk/recorder, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the presiding officer or secretary/clerk of the board, when the claim is against a special district;

(E) the attorney general, when the claim is against the State of Utah;

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or

(G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).

(4) (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(b) If a guardian ad litem is appointed, the time for filing a claim under Section 63-30d-402 begins when the order appointing the guardian is issued.

(5) (a) Each governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:

(i) the name and address of the governmental entity;

(ii) the office or agent designated to receive a notice of claim; and

(iii) the address at which it is to be directed and delivered.

(b) Each governmental entity shall update its statement as necessary to ensure that the information is accurate.

(c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).

(d) (i) Newly incorporated municipalities shall file the statement required by Subsection (5)(a) at the time that the statement of incorporation and boundaries is filed with the lieutenant governor under Section 10-1-106.

(ii) Newly incorporated special districts shall file the statement required by Subsection (5)(a) at the time that the written notice of creation of the district is filed with the State Tax Commission and State Auditor under Sections 17A-1-102 and 17B-3-215.

(e) A governmental entity may, in its statement, identify an agent authorized by the entity to accept notices of claim on its behalf.

(6) The Division of Corporations and Commercial Code shall:

(a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and

(b) make the indices available to the public both electronically and via hard copy.

(7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).

**Section 16. Section 63-30d-402 is enacted to read:**

**63-30d-402. Time for filing notice of claim.**

A claim against a governmental entity, or against an employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the person and according to the requirements of Section 63-30d-401 within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental.

**Section 17. Section 63-30d-403 is enacted to read:**

**63-30d-403. Notice of Claim -- Approval or denial by governmental entity or insurance carrier within 60 days -- remedies for denial of claim.**

(1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its insurance carrier shall inform the claimant in writing that the claim has either been approved or denied.

(b) A claim is considered to be denied if, at the end of the 60-day period, the governmental entity or its insurance carrier has failed to approve or deny the claim.

(2) (a) If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity.

(b) The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

**Section 18. Section 63-30d-501 is enacted to read:**

**Part 5. Legal Actions Under This Chapter -- Jurisdiction and Venue**

**63-30d-501. Jurisdiction of district courts over actions.**

(1) The district courts have exclusive, original jurisdiction over any action brought under this chapter.

(2) An action brought under this chapter may not be tried as a small claims action.

**Section 19. Section 63-30d-502 is enacted to read:**

**63-30d-502. Venue of actions.**

(1) Actions against the state may be brought in the county in which the claim arose or in Salt Lake County.

(2) (a) Actions against a county may be brought in the county in which the claim arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county.

(b) Leave may be granted ex parte.

(3) Actions against all other political subdivisions, including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

**Section 20. Section 63-30d-601 is enacted to read:**

**Part 6. Legal Actions Under This Chapter -- Procedures, Requirements, Damages, and Limitations on Judgments**

**63-30d-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking required.**

(1) An action brought under this chapter shall be governed by the Utah Rules of Civil Procedure to the extent that they are consistent with this chapter.

(2) At the time the action is filed, the plaintiff shall file an undertaking in a sum fixed by the court that is:

(a) not less than \$300; and

(b) conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

**Section 21. Section 63-30d-602 is enacted to read:**

**63-30d-602. Compromise and settlement of claims.**

(1) A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise and settle any action as to the damages or other relief sought.

(2) The risk manager in the Department of Administrative Services may compromise and settle any action against the state for which the Risk Management Fund may be liable:

(a) on the risk manager's own authority, if the amount of the settlement is \$25,000 or less;

(b) with the concurrence of the attorney general or the attorney general's representative and the executive director of the Department of Administrative Services if the amount of the settlement is \$25,000.01 to \$100,000; or

(c) by complying with the procedures and requirements of Title 63, Chapter 38b, State Settlement Agreements, if the amount of the settlement is more than \$100,000.

**Section 22. Section 63-30d-603 is enacted to read:**

**63-30d-603. Exemplary or punitive damages prohibited -- Governmental entity exempt from execution, attachment, or garnishment.**

(1) (a) A judgment may not be rendered against a governmental entity for exemplary or punitive damages.

(b) If a governmental entity would be required to pay the judgment under Section 63-30d-902 or 63-30d-903, the governmental entity shall pay any judgment or portion of any judgment entered against its employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages.

(2) Execution, attachment, or garnishment may not issue against a governmental entity.

**Section 23. Section 63-30d-604 is enacted to read:**

**63-30d-604. Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.**

(1) (a) Except as provided in Subsections (2) and (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$553,500 for one person in any

one occurrence, or \$1,107,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than \$553,500 for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$221,400 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Subsection (4).

(4) (a) Each year, the risk manager shall:

(i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code;

(ii) calculate the increase or decrease in the limitation of judgment amounts established in this section as a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2003; and

(iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the limitation of judgment amounts established in Subsection (1) to the nearest \$100.

(b) Each even-numbered year after 2004, the risk manager shall make rules, which become effective no later than July 1, that establish the new limitation of judgment amounts.

(c) Adjustments made by the risk manager to the limitation of judgment amounts established by this section have prospective effect only from the date the rules establishing the new limitation of judgment take effect and those adjusted limitations of judgment apply only to claims for injuries or losses that occur after the effective date of the rules that establish those new limitations of judgement.

**Section 24. Section 63-30d-701 is enacted to read:**

**Part 7. Payment Process and Sources for Paying Proved Claims Against Governmental Entities**

**63-30d-701. Payment of claim or judgment against state -- Presentment for payment.**

(1) (a) Each claim, as defined by Subsection 63-30d-102(1), that is approved by the state or any

final judgment obtained against the state shall be presented for payment to:

(i) the state risk manager; or

(ii) the office, agency, institution, or other instrumentality involved, if payment by that instrumentality is otherwise permitted by law.

(b) If payment of the claim is not authorized by law, the judgment or claim shall be presented to the board of examiners for action as provided in Section 63-6-10.

(c) If a judgment against the state is reduced by the operation of Section 63-30d-604, the claimant may submit the excess claim to the board of examiners.

**Section 25. Section 63-30d-702 is enacted to read:**

**63-30d-702. Payment of claim or judgment against political subdivision -- Procedure by governing body -- payment options.**

(1) (a) Each claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body of the political subdivision.

(b) The governing body shall pay the claim immediately from the general funds of the political subdivision unless:

(i) the funds are appropriated to some other use or restricted by law or contract for other purposes; or

(ii) the political subdivision opts to pay the claim or award in installments under Subsection (2).

(2) If the subdivision is unable to pay the claim or award during the current fiscal year, it may pay the claim or award in not more than ten ensuing annual installments of equal size or in whatever other installments that are agreeable to the claimant.

**Section 26. Section 63-30d-703 is enacted to read:**

**63-30d-703. Reserve funds for payment of claims or purchase of insurance created by political subdivisions.**

Any political subdivision may create and maintain a reserve fund or, may jointly with one or more other political subdivisions, make contributions to a joint reserve fund, for the purpose of:

(1) making payment of claims against the cooperating subdivisions when they become payable under this chapter; or

(2) for the purpose of purchasing liability insurance to protect the cooperating subdivisions from any or all risks created by this chapter.

**Section 27. Section 63-30d-704 is enacted to read:**

**63-30d-704. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.**

(1) Notwithstanding any provision of law to the contrary, a political subdivision may levy an annual property tax sufficient to pay:

- (a) any claim, settlement, or judgment;
- (b) the costs to defend against any claim, settlement, or judgment; or
- (c) for the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments that may be reasonably anticipated.

(2) (a) The payments authorized to pay for punitive damages or to pay the premium for authorized insurance is money spent for a public purpose within the meaning of this section and Article XIII, Sec. 5, Utah Constitution, even though, as a result of the levy, the maximum levy as otherwise restricted by law is exceeded.

(b) No levy under this section may exceed .0001 per dollar of taxable value of taxable property.

(c) The revenues derived from this levy may not be used for any purpose other than those specified in this section.

**Section 28. Section 63-30d-801 is enacted to read:**

**Part 8. Self-insurance and Purchase of Liability Insurance by Governmental Entities**

**63-30d-801. Insurance -- Self-insurance or purchase of liability insurance by governmental entity authorized -- Establishment of trust accounts for self-insurance.**

(1) Any governmental entity within the state may self-insure, purchase commercial insurance, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against:

- (a) any risk created or recognized by this chapter; or
- (b) any action for which a governmental entity or its employee may be held liable.

(2) (a) In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establishing a trust account.

(b) In creating the trust account, the governmental entity shall ensure that:

- (i) the trust account is managed by an independent private trustee; and
- (ii) the independent private trustee has authority, with respect to claims covered by the trust, to:

(A) expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and

(B) pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon.

(c) Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to:

- (i) employ counsel to defend actions against the entity and its employees;
- (ii) protect and safeguard the assets of the trust;
- (iii) provide for claims investigation and adjustment services;
- (iv) employ expert witnesses and consultants; and
- (v) provide other services and functions that are necessary and proper to carry out the purposes of the trust.

(d) The monies and interest earned on the trust fund may be invested by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are subject to audit by the state auditor.

**Section 29. Section 63-30d-802 is enacted to read:**

**63-30d-802. Insurance -- Liability insurance -- Government vehicles operated by employees outside scope of employment.**

(1) A governmental entity that owns vehicles driven by an employee of the governmental entity with the express or implied consent of the entity, but which, at the time liability is incurred as a result of an automobile accident, is not being driven and used within the course and scope of the driver's employment is, subject to Subsection (2), considered to provide the driver with the insurance coverage required by Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act.

(2) The liability coverages considered provided are the minimum limits under Section 31A-22-304.

**Section 30. Section 63-30d-803 is enacted to read:**

**63-30d-803. Liability insurance -- Construction of policy not in compliance with act.**

(1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of this chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

(2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before July 1, 2004 that was purchased to insure against any risk that

may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

**Section 31. Section 63-30d-804 is enacted to read:**

**63-30d-804. Liability insurance -- Methods for purchase or renewal.**

(1) Except as provided in Subsection (2), a contract or policy of insurance may be purchased or renewed under this chapter only upon public bid to be let to the lowest and best bidder.

(2) The purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Title 63, Chapter 56, Utah Procurement Code.

**Section 32. Section 63-30d-805 is enacted to read:**

**63-30d-805. Liability insurance -- Insurance for employees authorized -- No right to indemnification or contribution from governmental agency.**

(1) (a) A governmental entity may insure any or all of its employees against liability, in whole or in part, for injury or damage resulting from an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority, regardless of whether or not that entity is immune from suit for that act or omission.

(b) Any expenditure for that insurance is for a public purpose.

(c) Under any contract or policy of insurance providing coverage on behalf of a governmental entity or employee for any liability defined by this section, regardless of the source of funding for the coverage, the insurer has no right to indemnification or contribution from the governmental entity or its employee for any loss or liability covered by the contract or policy.

(2) Any surety covering a governmental entity or its employee under any faithful performance surety bond has no right to indemnification or contribution from the governmental entity or its employee for any loss covered by that bond based on any act or omission for which the governmental entity would be obligated to defend or indemnify under the provisions of Section 63-30d-902.

**Section 33. Section 63-30d-901 is enacted to read:**

**Part 9. Coverage and Representation of State Entities and Employees.**

**63-30d-901. Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in**

**representing the state, its branches, members, or employees.**

(1) (a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where coverage under the Risk Management Fund created by Section 63A-4-201 applies.

(b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims.

(c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims in those cases lies with the attorney general and the state risk manager.

(2) (a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.

(b) If the general counsel for the state judiciary undertakes independent legal representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.

(c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.

(3) (a) If the Legislative Management Committee, after consultation with the general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.

(b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.

(c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees,

where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.

(4) (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the Utah Code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Administrative Services for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising state agencies and employees regarding any of those claims.

(b) The risk manager shall draw funds from the Risk Management Fund for this purpose.

**Section 34. Section 63-30d-902 is enacted to read:**

**63-30d-902. Defending government employee -- Request -- Cooperation -- Payment of judgment.**

(1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:

(a) during the performance of the employee's duties;

(b) within the scope of the employee's employment; or

(c) under color of authority.

(2) (a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend him:

(i) within ten days after service of process upon him; or

(ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on his behalf; or

(iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.

(b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.

(3) The governmental entity may decline to defend, or, subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:

(a) that the act or omission in question did not occur:

(i) during the performance of the employee's duties;

(ii) within the scope of his employment; or

(iii) under color of authority; or

(b) that the injury or damage on which the claim was based resulted from conditions set forth in Subsection 63-30d-202(3)(c).

(4) (a) Within ten days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.

(b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.

(5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.

(6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment if any of the conditions set forth in Subsection (3) are established.

(7) (a) Nothing in this section or Section 63-30d-903 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63-30d-802.

(b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under any of the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Section 31A-22-304.

**Section 35. Section 63-30d-903 is enacted to read:**

**63-30d-903. Recovery of judgment paid and defense costs by government employee.**

(1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, that the governmental entity is required to pay under Section 63-30d-902, the employee may recover from the governmental entity the amount of the payment and the reasonable costs incurred in the employee's defense.

(2) (a) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under a reservation of rights as provided in Subsection 63-30d-902(6), the employee may recover from the governmental entity under Subsection (1) if the employee can prove that none of the conditions set forth in Subsection 63-30d-202(3)(c) applied.

(b) The employee has the burden of proof that none of the conditions set forth in Subsection 63-30d-202(3)(c) applied.

**Section 36. Section 63-30d-904 is enacted to read:**

**63-30d-904. Indemnification of governmental entity by employee not required.**

If a governmental entity pays all or part of a judgment, compromise, or settlement based on a claim against the governmental entity or an employee, the employee is not required to indemnify the governmental entity for the payment.

**Section 37. Section 63-56-59 is amended to read:**

**63-56-59. Jurisdiction of district court.**

(1) The district court shall have jurisdiction over an action, whether the action is at law or in equity, between the state and:

(a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in connection with the solicitation or award of a contract;

(b) a person who is subject to a suspension or debarment proceeding; and

(c) a contractor, for any cause of action which arises under, or by virtue of a contract.

(2) The provisions of [~~Sections 63-30-11, 63-30-12, 63-30-14, 63-30-15, and 63-30-19~~] Title 63, Chapter 30d, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63-30d-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

**Section 38. Section 76-6-513 is amended to read:**

**76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

(1) As used in this section:

(a) "Fiduciary" is as defined in Section 22-1-1.

(b) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.

(c) "Governmental entity" is as defined in Section ~~[63-30-2]~~ 63-30d-102.

(d) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.

(e) "Property" is as defined in Section 76-6-401.

(f) "Public monies" is as defined in Section 76-8-401.

(2) A person is guilty of unlawfully dealing with property by a fiduciary if he deals with property that has been entrusted to him as a fiduciary, or property of a governmental entity, public monies, or of a financial institution, in a manner which he knows is a violation of his duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted. A violation of this Subsection (2) is punishable under Section 76-6-412.

(3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if, without permission of the owner of the property or some other person with authority to give permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

(b) An offense under Subsection (3)(a) is punishable as:

(i) a felony of the second degree if the value of the property wrongfully pledged is or exceeds \$5,000;

(ii) a felony of the third degree if the value of the property wrongfully pledged is or exceeds \$1,000 but is less than \$5,000;

(iii) a class A misdemeanor if the value of the property is or exceeds \$300, but is less than \$1,000 or the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

(iv) a class B misdemeanor if the value of the property is less than \$300.

**Section 39. Section 78-3a-113 (Superseded 07/01/04) is amended to read:**

**78-3a-113 (Superseded 07/01/04). Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.**

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor is seriously endangered in his surroundings or if the minor seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from his parents, guardian, or custodian; or

(e) there is reason to believe the minor is subject to the state's compulsory education law and that the minor is absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances he could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile

court or in emergency situations in which a peace officer is not immediately available.

(3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention.

(b) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A minor may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), he shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement.

(b) (i) The designated youth corrections facility staff shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated youth corrections facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when disclosure constitutes fraud or [malice] willful misconduct as provided in Section [63-30-4] 63-30d-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Subsection 62A-7-112(8).

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall arrange appropriate placement.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and shall promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a minor is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

**Section 40. Section 78-3a-113 (Effective 07/01/04) is amended to read:**

**78-3a-113 (Effective 07/01/04). Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.**

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor is seriously endangered in his surroundings or if the minor seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from his parents, guardian, or custodian; or

(e) there is reason to believe the minor is subject to the state's compulsory education law and that the minor is absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances he could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.

(3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention.

(b) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A minor may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), he shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement.

(b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated youth corrections facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when disclosure constitutes fraud or [malice] willful misconduct as provided in Section [63-30-4] 63-30d-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Subsection 62A-7-112(8).

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall arrange appropriate placement.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and shall promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a minor is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

**Section 41. Section 78-3a-114 (Superseded 07/01/04) is amended to read:**

**78-3a-114 (Superseded 07/01/04). Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of minors for criminal proceedings -- Bail laws inapplicable, exception.**

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Youth Corrections.

(b) A minor who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A minor may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

(2) After admission to a detention facility pursuant to the guidelines established by the Division of Youth Corrections and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the minor to his parents, guardian, or custodian if it is found he can be safely returned to their care, either upon written promise to bring the minor to the court at a time set or without restriction.

(a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the minor remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under Subsection (2) shall be retained by the Division of Youth Corrections to recover the cost of care for the time the minor remains in the facility.

(3) (a) When a minor is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that they have the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(b) Detention hearings shall be held by the judge or by a commissioner.

(c) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(d) If the minor is released, and the minor remains in the facility, because the parents, guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78-3a-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) If the court finds at a detention hearing that it is not safe to release the minor, the judge or commissioner may order the minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) If the court orders home detention, it shall direct that notice of its order be provided to designated persons in the appropriate local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for

purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or [malice] willful misconduct as provided in Section ~~63-30-4~~ 63-30d-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101 for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the Division of Youth Corrections or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(6) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(7) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement facilities apply to this Subsection (8).

(b) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for minors may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure youth corrections facility is not an appropriate place of confinement for detention purposes under this section.

(9) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a minor who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the minor to a detention facility, unless otherwise ordered by the juvenile court.

(10) This section does not apply to a minor who is brought to the adult facility under charges

pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78-3a-603.

(11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may be detained in a jail or other place of detention used for adults charged with crime.

(12) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78-3a-503(11).

(13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Youth Corrections detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

**Section 42. Section 78-3a-114 (Effective 07/01/04) is amended to read:**

**78-3a-114 (Effective 07/01/04). Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of minors for criminal proceedings -- Bail laws inapplicable, exception.**

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A minor who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A minor may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

(2) After admission to a detention facility pursuant to the guidelines established by the Division of Juvenile Justice Services and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the minor to his parents, guardian, or custodian if it is found he can be safely returned to their care, either upon written promise to bring the minor to the court at a time set or without restriction.

(a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the minor remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the minor remains in the facility.

(3) (a) When a minor is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that they have the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(b) Detention hearings shall be held by the judge or by a commissioner.

(c) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(d) If the minor is released, and the minor remains in the facility, because the parents, guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78-3a-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) If the court finds at a detention hearing that it is not safe to release the minor, the judge or commissioner may order the minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) If the court orders home detention, it shall direct that notice of its order be provided to designated persons in the appropriate local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or [malice] willful misconduct as provided in Section [63-30-4] 63-30d-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101 for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(6) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(7) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement facilities apply to this Subsection (8).

(b) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for minors may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure youth corrections facility is not an appropriate place of confinement for detention purposes under this section.

(9) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a minor who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the minor to a detention facility, unless otherwise ordered by the juvenile court.

(10) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78-3a-603.

(11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may be detained in a jail or other place of detention used for adults charged with crime.

(12) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78-3a-503(11).

(13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

**Section 43. Section 78-3a-118 (Superseded 07/01/04) is amended to read:**

**78-3a-118 (Superseded 07/01/04).**

**Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) his parent or guardian;

(B) the Division of Youth Corrections; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or ~~malice~~ willful misconduct as provided in Section ~~[63-30-4]~~ 63-30d-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 45 days, which period may

be extended up to 15 days at the request of the director of the Division of Youth Corrections.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to those minors adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78-3a-901.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (A) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318 and impose fines in limited amounts.

(B) The court may also require the minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(C) If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in

a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by Section 78-3a-506.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any

other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has

previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the minor child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority;

(B) are not subject to review under Section 78-3a-119; and

(C) may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Youth Corrections, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78-3a-318.

**Section 44. Section 78-3a-118 (Effective 07/01/04) is amended to read:**

**78-3a-118 (Effective 07/01/04). Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) his parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or [malice] willful misconduct as provided in Section [63-30-4] 63-30d-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Juvenile Justice Services.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to those minors adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78-3a-901.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of

Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (A) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318 and impose fines in limited amounts.

(B) The court may also require the minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(C) If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by Section 78-3a-506.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section

78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be committed to the physical custody of a local mental health authority, in accordance with the procedures

and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the minor child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority;

(B) are not subject to review under Section 78-3a-119; and

(C) may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire

with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78-3a-318.

**Section 45. Section 78-17-3 is amended to read:**

**78-17-3. Liability imposed and limitations -- Defenses -- Limitations on damages.**

(1) Except as provided in this section, any person who owns, holds under license, transports, ships, stores, or disposes of nuclear material is liable, without regard to the conduct of any other person, for harm from nuclear incidents arising in connection with or resulting from such ownership, transportation, shipping, storage, or disposal.

(2) Except as provided in this section, any person who owns, designs, constructs, operates, or maintains facilities, structures, vehicles, or equipment used for handling, transportation, shipment, storage, or disposal of nuclear material is liable, without regard to the conduct of any other

person, for harm from nuclear incidents arising in connection with or resulting from such ownership, design, construction, operation, and maintenance.

(3) Liability established by this chapter shall only be imposed if a court of competent jurisdiction finds that:

(a) the nuclear incident which is the basis for the suit is covered by existing financial protection undertaken pursuant to 42 U.S.C. Sec. 2210; and

(b) a person who is liable under this chapter is a person indemnified as defined in 42 U.S.C. Sec. 2014.

(4) Immunity of the state, its political subdivisions, or the agencies of either from suit are only waived with respect to a suit arising from a nuclear incident:

(a) in accordance with ~~Sections 63-30-1 through 63-30-38~~ Title 63, Chapter 30d, Governmental Immunity Act of Utah; or

(b) when brought by a person suffering harm.

(5) The conduct of the person suffering harm is not a defense to liability, except that this section does not preclude any defense based on:

(a) the claimant's knowing failure to mitigate damages related to any injury or damage to the claimant or the claimant's property; or

(b) an incident involving nuclear material that is knowingly and wrongfully caused by the claimant.

(6) No person may collect punitive or exemplary damages under this chapter.

**Section 46. Section 78-19-1 is amended to read:**

**78-19-1. Definitions.**

As used in this chapter:

(1) "Damage or injury" includes physical, nonphysical, economic, and noneconomic damage.

(2) "Financially secure source of recovery" means that, at the time of the incident, a nonprofit organization:

(a) has an insurance policy in effect that covers the activities of the volunteer and has an insurance limit of not less than the limits established under the ~~[Utah]~~ Governmental Immunity Act of Utah in Section ~~[63-30-34]~~ 63-30d-604; or

(b) has established a qualified trust with a value not less than the combined limits for property damage and single occurrence liability established under the ~~[Utah]~~ Governmental Immunity Act of Utah in Section ~~[63-30-34]~~ 63-30d-604.

(3) "Nonprofit organization" means any organization, other than a public entity, described in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under Section 501 (a) of that code.

(4) "Public entity" has the same meaning as defined in Section 63-30b-1.

(5) "Qualified trust" means a trust held for the purpose of compensating claims for damages or

injury in a trust company licensed to do business in this state under the provisions of Title 7, Chapter 5, Trust Business.

(6) "Reimbursements" means, with respect to each nonprofit organization:

(a) compensation or honoraria totaling less than \$300 per calendar year; and

(b) payment of expenses actually incurred.

(7) (a) "Volunteer" means an individual performing services for a nonprofit organization who does not receive anything of value from that nonprofit organization for those services except reimbursements.

(b) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

(c) "Volunteer" does not include an individual performing services for a public entity to the extent the services are within the scope of Title 63, Chapter 30b, Immunity for Persons Performing Voluntary Services or Title 67, Chapter 20, Volunteer Government Workers Act.

#### Section 47. Repealer.

This bill repeals:

Section 63-30-1, Short title.

Section 63-30-2, Definitions.

Section 63-30-3, Immunity of governmental entities from suit.

Section 63-30-4, Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability.

Section 63-30-5, Waiver of immunity as to contractual obligations.

Section 63-30-6, Waiver of immunity as to actions involving property.

Section 63-30-7, Waiver of immunity for negligent damage, destruction or loss of seized property.

Section 63-30-8, Waiver of immunity for injury caused by defective, unsafe, or dangerous condition of highways, bridges, or other structures.

Section 63-30-9, Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement -- Exception.

Section 63-30-10, Waiver of immunity for injury caused by negligent act or omission of employee -- Exceptions.

Section 63-30-10.5, Waiver of immunity for taking private property without compensation.

Section 63-30-10.6, Attorneys' fees for records requests.

Section 63-30-11, Claim for injury -- Notice -- Contents -- Service -- Legal disability -- Appointment of guardian ad litem.

Section 63-30-12, Claim against state or its employee -- Time for filing notice.

Section 63-30-13, Claim against political subdivision or its employee -- Time for filing notice.

Section 63-30-14, Claim for injury -- Approval or denial by governmental entity or insurance carrier within ninety days.

Section 63-30-15, Denial of claim for injury -- Authority and time for filing action against governmental entity.

Section 63-30-16, Jurisdiction of district courts over actions -- Application of Rules of Civil Procedure.

Section 63-30-17, Venue of actions.

Section 63-30-18, Compromise and settlement of actions.

Section 63-30-19, Undertaking required of plaintiff in action.

Section 63-30-20, Judgment against governmental entity bars action against employee.

Section 63-30-22, Exemplary or punitive damages prohibited -- Governmental entity exempt from execution, attachment, or garnishment.

Section 63-30-23, Payment of claim or judgment against state -- Presentment for payment.

Section 63-30-24, Payment of claim or judgment against political subdivision -- Procedure by governing body.

Section 63-30-25, Payment of claim or judgment against political subdivision -- Installment payments.

Section 63-30-26, Reserve funds for payment of claims or purchase of insurance created by political subdivisions.

Section 63-30-27, Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.

Section 63-30-28, Liability insurance -- Purchase of insurance or self-insurance by governmental entity authorized -- Establishment of trust accounts for self-insurance.

Section 63-30-29.5, Liability insurance -- Government vehicles operated by employees outside scope of employment.

Section 63-30-31, Liability insurance -- Construction of policy not in compliance with act.

Section 63-30-32, Liability insurance -- Methods for purchase or renewal.

Section 63-30-33, Liability insurance -- Insurance for employees authorized -- No

**right to indemnification or contribution from governmental agency.**

**Section 63-30-34, Limitation of judgments against governmental entity or employee -- Insurance coverage exception -- Process for adjustment of limits.**

**Section 63-30-35, Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.**

**Section 63-30-36, Defending government employee -- Request -- Cooperation -- Payment of judgment.**

**Section 63-30-37, Recovery of judgment paid and defense costs by government employee.**

**Section 63-30-38, Indemnification of governmental entity by employee not required.**

**Section 78-60-101, Title.**

**Section 78-60-102, Definitions.**

**Section 78-60-103, Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.**

**Section 48. Transition clause.**

It is the intent of the legislature that:

(1) injuries alleged to be caused by a governmental entity that occurred before July 1, 2004, be governed by the provisions of Title 63, Chapter 30, Utah Governmental Immunity Act; and

(2) injuries alleged to be caused by a governmental entity that occurred on or after July 1, 2004, be governed by the provisions of Title 63, Chapter 30d, Governmental Immunity Act of Utah.

**Section 49. Effective date.**

This bill takes effect on July 1, 2004.

**Section 50. Coordinating S.B. 55 with S.B. 9.**

If this S.B. 55, Governmental Immunity Act of Utah, and S.B. 9, Property Rights Amendments, both pass, and the amendments to Section 63-30-10.5 pass as part of S.B. 9, it is the intent of the Legislature to enact the following provisions and direct that the Office of Legislative Research and General Counsel include that enactment in preparing the Utah Code database for publication:

**“63-30d-203. Exemptions for certain takings actions.**

An action that involves takings law, as defined in Section 63-34-13, is not subject to the requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, and 63-30d-601.”

**Section 51. Coordinating S.B. 55 with H.B. 111**

If this S.B. 55, Governmental Immunity Act of Utah, and H.B. 111, Municipal Government Amendments, both pass, it is the intent of the

Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, amend Subsection 63-30d-401(3)(b)(ii)(A) to read as follows:

“(A) the city or town clerk, when the claim is against an incorporated city or town;”

# **Exhibit C**

2019 Utah Laws 1460-68

House Bill 311

**CHAPTER 229****H. B. 311**

Passed March 14, 2019  
 Approved March 25, 2019  
 Effective May 14, 2019

**GOVERNMENTAL IMMUNITY REVISIONS**

Chief Sponsor: Michael K. McKell  
 Senate Sponsor: Curtis S. Bramble

**LONG TITLE****General Description:**

This bill modifies provisions relating to governmental immunity.

**Highlighted Provisions:**

This bill:

- ▶ waives governmental immunity for injury resulting from certain claims of sexual battery;
- ▶ provides an additional basis for disallowing a governmental entity to challenge the timeliness of a notice of claim;
- ▶ modifies the time for filing an action against a governmental entity;
- ▶ modifies provisions relating to a governmental entity's response to a notice of claim;
- ▶ modifies a provision relating to a plaintiff's filing of an undertaking in an action under the Governmental Immunity Act of Utah;
- ▶ increases the aggregate limit on injury claims against governmental entities;
- ▶ provides for the board of examiners to require a special master proceeding for excess damages claims that the board of examiners considers;
- ▶ authorizes the use of money in the General Fund Budget Reserve Account to pay for claims approved by the board of examiners; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

- 63G-7-201, as last amended by Laws of Utah 2016, Chapter 181  
 63G-7-301, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018  
 63G-7-401, as last amended by Laws of Utah 2014, Chapter 210  
 63G-7-403, as last amended by Laws of Utah 2017, Chapter 300  
 63G-7-601, as last amended by Laws of Utah 2017, Chapter 300  
 63G-7-604, as last amended by Laws of Utah 2017, Chapter 151  
 63J-1-312, as last amended by Laws of Utah 2017, Chapter 474

**ENACTS:**

63G-9-302.5, Utah Code Annotated 1953

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

**Section 1. Section 63G-7-201 is amended to read:**

**63G-7-201. Immunity of governmental entities and employees from suit.**

(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:

(a) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act;

(c) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:

- (i) an emergency shelter;
- (ii) housing;
- (iii) a staging place; or
- (iv) a medical facility; and

(d) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

(3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:

(a) a latent dangerous or latent defective condition of:

(i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or

(ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

(b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a

negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) except as provided in Subsection 63G-7-301(2)(k), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

(d) a failure to make an inspection or making an inadequate or negligent inspection;

(e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;

(g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

(h) the collection or assessment of taxes;

(i) an activity of the Utah National Guard;

(j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;

(k) a natural condition on publicly owned or controlled land;

(l) a condition existing in connection with an abandoned mine or mining operation;

(m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;

(n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:

(i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;

(ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:

(A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and

(B) the municipality or county where the trail is located; and

(iii) the written agreement:

(A) contains a plan for operation and maintenance of the trail; and

(B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;

(o) research or implementation of cloud management or seeding for the clearing of fog;

(p) the management of flood waters, earthquakes, or natural disasters;

(q) the construction, repair, or operation of flood or storm systems;

(r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;

(s) the activity of:

(i) providing emergency medical assistance;

(ii) fighting fire;

(iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(iv) an emergency evacuation;

(v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

(vi) intervening during a dam emergency;

(t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

(u) an unauthorized access to government records, data, or electronic information systems by any person or entity; or

(v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

**Section 2. Section 63G-7-301 is amended to read:**

**63G-7-301. Waivers of immunity.**

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment; ~~and~~

(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under Section 20A-19-301(5)[-]; and

(k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:

(i) against a student of a public elementary or secondary school, including a charter school; and

(ii) by an employee of a public elementary or secondary school or charter school who:

(A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;

(B) is criminally charged in connection with the sexual battery; and

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402.

**Section 3. Section 63G-7-401 is amended to read:**

**63G-7-401. When a claim arises -- Notice of claim requirements -- Governmental entity statement -- Limits on challenging validity or timeliness of notice of claim.**

(1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:

(i) that the claimant had a claim against the governmental entity or [its] the governmental entity's employee; and

(ii) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against [its] the governmental entity's employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as ~~they~~ the damages are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63G-7-202(3)(c), the name of the employee.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered by hand or by mail according to the requirements of Section 68-3-8.5 to the office of:

(A) the city or town clerk, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the presiding officer or ~~secretary/clerk~~ secretary or clerk of the board, when the claim is against a local district or special service district;

(E) the attorney general, when the claim is against the state;

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or

(G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).

(4) (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(b) If a guardian ad litem is appointed, the time for filing a claim under Section 63G-7-402 begins when the order appointing the guardian ad litem is issued.

(5) (a) ~~Each~~ A governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:

(i) the name and address of the governmental entity;

(ii) the office or agent designated to receive a notice of claim; and

(iii) the address at which ~~it~~ the notice of claim is to be directed and delivered.

(b) ~~Each~~ A governmental entity shall update ~~its~~ the governmental entity's statement as necessary to ensure that the information is accurate.

(c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).

(d) (i) A newly incorporated municipality shall file the statement required by Subsection (5)(a) promptly after the lieutenant governor issues a

certificate of incorporation under Section 67-1a-6.5.

(ii) A newly incorporated local district shall file the statement required by Subsection (5)(a) at the time that the written notice is filed with the lieutenant governor under Section 17B-1-215.

(e) A governmental entity may, in ~~its~~ the governmental entity's statement, identify an agent authorized ~~by the entity~~ to accept notices of claim on ~~its~~ behalf of the governmental entity.

(6) The Division of Corporations and Commercial Code shall:

(a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and

(b) make the indices available to the public both electronically and via hard copy.

(7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).

(8) A governmental entity may not challenge the timeliness, under Section 63G-7-402, of a notice of claim if:

(a) (i) the claimant files a notice of claim with the governmental entity:

~~(i)~~ (A) in accordance with the requirements of this section; and

~~(ii)~~ (B) within 30 days after the expiration of the time for filing a notice of claim under Section 63G-7-402;

~~(b)~~ (ii) the claimant demonstrates that the claimant previously filed a notice of claim:

~~(i)~~ (A) in accordance with the requirements of this section;

~~(ii)~~ (B) with an incorrect governmental entity;

~~(iii)~~ (C) in the good faith belief that the claimant was filing the notice of claim with the correct governmental entity;

~~(iv)~~ (D) within the time for filing a notice of claim under Section 63G-7-402; and

~~(v)~~ (E) no earlier than 30 days before the expiration of the time for filing a notice of claim under Section 63G-7-402; and

~~(e)~~ (iii) the claimant submits with the notice of claim:

~~(i)~~ (A) a copy of the previous notice of claim that was filed with a governmental entity other than the correct governmental entity; and

~~(ii)~~ (B) proof of the date the previous notice of claim was filed[-]; or

(b) (i) the claimant delivers by hand or by mail a notice of claim:

(A) to an elected official or executive officer of the correct governmental entity but not to the correct office under Subsection (3)(b)(ii); and

(B) that otherwise meets the requirements of Subsection (3); and

(ii) (A) the claimant contemporaneously sends a hard copy or electronic copy of the notice of claim to the office of the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, representing the correct governmental entity; or

(B) the governmental entity does not, within 60 days after the claimant delivers the notice of claim under Subsection (8)(b)(i), provide written notification to the claimant of the delivery defect and of the identity of the correct office to which the claimant is required to deliver the notice of claim.

**Section 4. Section 63G-7-403 is amended to read:**

**63G-7-403. Notifying of the receipt of a notice of claim -- Action in district court -- Time for commencing action -- Commencing action after time limit.**

(1) [(a)] Within 60 days [of] after the filing of a notice of claim, the governmental entity or its insurance carrier shall inform the claimant in writing:

(a) that the notice of claim has [either] been [approved or denied.] received; and

(b) if applicable, that the governmental entity believes it is not the correct governmental entity with which the notice of claim should have been filed.

[(b) A claim is considered to be denied if, at the end of the 60-day period, the governmental entity or its insurance carrier has failed to approve or deny the claim.]

(2) (a) [If the claim is denied, a] (i) Subject to Subsections (2)(a)(ii) and (b), a claimant may pursue an action in the district court against the governmental entity or an employee of the entity.

(ii) A claimant may not file an action before the date that is 60 days after the claimant's notice of claim is filed.

(b) Subject to Subsection (3), a claimant shall commence the action within [one year after denial of] two years after the claim [or within one year after the denial period specified in this chapter has expired] arises, as provided in Subsection 63G-7-401(1), regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) As used in this Subsection (3), "claimant" includes a representative of an individual:

(i) who dies before an action is begun under this section; and

(ii) whose cause of action survives the individual's death.

(b) A claimant may commence an action after the time limit described in Subsection (2)(b) if:

(i) the claimant had commenced a previous action within the time limit of Subsection (2)(b);

(ii) the previous action failed or was dismissed for a reason other than on the merits; and

(iii) the claimant commences the new action within one year after the previous action failed or was dismissed.

(c) A claimant may commence a new action under Subsection (3)(b) only once.

**Section 5. Section 63G-7-601 is amended to read:**

**63G-7-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking required.**

(1) An action brought under this chapter shall be governed by the Utah Rules of Civil Procedure to the extent that they are consistent with this chapter.

(2) [At the time the action is filed, the] A plaintiff who files an action under this chapter shall file an undertaking within 20 days after commencement of the action:

(a) in the amount of \$300, unless otherwise ordered by the court; and

(b) conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

(3) If a plaintiff does not file an undertaking as required in Subsection (2), a court may, sua sponte or pursuant to a motion, order the plaintiff to file an undertaking in an amount and by a deadline that the court establishes.

(4) A defendant waives a defense based on the plaintiff's failure to file an undertaking under this section if the defendant does not raise the plaintiff's failure to file an undertaking as an affirmative defense in the defendant's initial responsive pleading.

**Section 6. Section 63G-7-604 is amended to read:**

**63G-7-604. Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.**

(1) (a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an

employee whom a governmental entity has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(d) Subject to Subsection (3), there is a [\$2,000,000] \$3,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Section 63G-7-605.

**Section 7. Section 63G-9-302.5 is enacted to read:**

**63G-9-302.5. Special master proceeding for damages cap claims.**

(1) As used in this section:

(a) "Claimant" means an individual who submits an excess damages claim to the board of examiners.

(b) "Damages cap" means the amount to which a personal injury claim is or would be reduced because of the operation of Subsection 63G-7-604(1)(a) or (d).

(c) "Damages cap settlement" means a settlement:

(i) between an individual with a personal injury claim that exceeds the damages cap and the governmental entity against which the personal injury claim is asserted; and

(ii) that provides for the governmental entity to pay the individual an amount equal to the damages cap to settle the personal injury claim.

(d) "Excess damages amount" means the amount of a personal injury claim that:

(i) exceeds the damages cap; and

(ii) a governmental entity would be liable to pay except for the operation of Subsection 63G-7-604(1)(a) or (d).

(e) "Excess damages claim" means a claim for an excess damages amount.

(f) "Government attorney" means:

(i) an attorney representing a political subdivision, if the personal injury claim that results in an excess damages claim was asserted against the political subdivision; or

(ii) the attorney general, if:

(A) the personal injury claim that results in an excess damages claim was asserted against the state; or

(B) the attorney general chooses to participate on behalf of a political subdivision, as provided in Subsection (9)(b).

(g) "Personal injury claim" means a claim for damages for personal injury that is subject to the operation of Subsection 63G-7-604(1)(a) or (d).

(h) "Responsible governmental entity" means:

(i) the political subdivision against which the personal injury claim was asserted, if an excess damages claim results from a personal injury claim against a political subdivision; or

(ii) the state, if an excess damages claim results from a personal injury claim against the state.

(i) "Special master list" means a list compiled under Subsection (7).

(j) "Statement of claim" means a statement detailing an excess damages claim.

(k) "Third party claim" means a personal injury claim that:

(i) arises out of the same underlying facts as the facts that provide the basis for an individual's personal injury claim against a governmental entity; and

(ii) the individual asserts against a person who the individual claims is also liable, in addition to the governmental entity, for the individual's personal injury claim.

(2) An individual may seek payment of an excess damages claim by submitting a written statement of claim to the board of examiners after, but no later than 180 days after, as applicable:

(a) (i) the date of a final, nonappealable judgment in favor of the individual on a personal injury claim in an amount that would have exceeded the damages cap except for the operation of Subsection 63G-7-604(1)(a) or (d); or

(ii) the date of a damages cap settlement; or

(b) the date that all third party claims the individual has asserted are resolved by final, nonappealable judgment or settlement, if that date is later than the applicable date under Subsection (2)(a).

(3) A statement of claim shall include:

(a) a recitation of the facts and explanation of the evidence supporting the excess damages claim;

(b) the excess damages amount;

(c) if applicable, a list and description of each third party claim the individual has asserted and an explanation of the disposition of the third party claim, including the amount of any judgment or settlement and the amount actually recovered;

(d) if applicable, a summary of a damages cap settlement; and

(e) if applicable, the amount of a final judgment awarded to the claimant against the governmental entity with:

(i) the amount of the judgment before operation of Subsection 63G-7-604(1)(a) or (d); and

(ii) a description of each element of damages awarded and the amount awarded for each element.

(4) A claimant shall submit with a statement of claim a copy of:

(a) a final judgment in favor of the claimant on the claimant's personal injury claim that forms the basis of the claimant's excess damages claim, together with any findings of fact and conclusions of law entered by the court, if the claimant has recovered a judgment that exceeds the damages cap; or

(b) the agreement memorializing the damages cap settlement, if the claimant is asserting an excess damages claim following a damages cap settlement.

(5) An excess damages claim may not include an amount recovered by a claimant from any source as compensation for damages for the claimant's personal injury claim.

(6) A claimant with a personal injury claim that is subject to the aggregate limit under Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the amount of the personal injury claim has been determined after application of Subsection 63G-7-604(1)(d).

(7) (a) The board of examiners shall compile a list of at least five retired Utah judges to serve as a special master under this section.

(b) A retired judge included in the special master list shall meet qualifications established by the board of examiners.

(8) (a) Except as provided in Subsection (8)(b), the board of examiners may require a claimant's excess damages claim to be submitted to a special master, as provided in this section, to make a recommendation concerning:

(i) the governmental entity's liability for the personal injury claim that forms the basis of the excess damages claim;

(ii) the amount of the claimant's damages and excess damages claim; or

(iii) both the governmental entity's liability and the amount of the claimant's damages and excess damages claim.

(b) The board of examiners may not require a claimant's excess damages claim to be submitted to a special master to the extent that the excess damages claim is based on a court judgment following a verdict by a trier of fact determining the governmental entity's liability or the amount of damages or both.

(9) (a) A political subdivision that is the responsible governmental entity may choose whether to have an attorney representing the political subdivision participate in proceedings under this section to represent the interests opposing approval of the excess damages claim.

(b) The attorney general may choose to participate in proceedings under this section to represent the interests opposing approval of the excess damages claim, whether or not the state is the responsible governmental entity.

(10) (a) If the board of examiners requires a claimant's excess damages claim to be submitted to a special master under this section, the claimant and the government attorney shall together select an individual from the special master list to act as special master.

(b) If the claimant and the government attorney are unable to agree on an individual to act as special master, or if there is no government attorney participating in the proceedings before the board of examiners, the board of examiners shall randomly select an individual from the special master list to act as special master.

(11) (a) Within 20 days after appointment under Subsection (10), a special master shall:

(i) prepare a written budget of the special master's estimated fees and costs relating to the special master's anticipated services under this section; and

(ii) provide the budget to the claimant.

(b) Within 20 days after receiving the special master's budget under Subsection (11)(a), the claimant shall:

(i) approve or reject the special master's budget; and

(ii) notify the board of examiners in writing of the approval or rejection.

(c) If the claimant rejects the special master's budget, the claimant's excess damages claim is considered withdrawn.

(d) If the claimant approves the special master's budget, the claimant shall pay all fees and costs of the special master in a special master proceeding under this section.

(12) Within 30 days after the approval of a special master's budget, the claimant shall provide the special master a written statement that includes:

(a) (i) a list of the name and last known address of each health care provider that has provided health care services to the claimant at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;

(ii) a description of the health care services provided by each health care provider listed in Subsection (12)(a)(i); and

(iii) a statement describing and explaining any health care services described under Subsection (12)(a)(ii) that the claimant claims are immaterial to the claimant's personal injury claim;

(b) (i) a list of the name and last known address of each health care insurer or other entity to which a health care or other similar benefit claim has been

submitted on the claimant's behalf at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;

(ii) a description of the health care or other similar benefits claimed under claims submitted to health care insurers or other entities listed under Subsection (12)(b)(i); and

(iii) a statement describing and explaining any health care or other similar benefit described under Subsection (12)(b)(ii) that the claimant claims is immaterial to the claimant's personal injury claim;

(c) a list of the name and address of each employer that employed the claimant at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement, if the claimant's personal injury claim includes a claim for lost wages or diminished earning capacity;

(d) a list of the name and address of each state or federal entity holding a statutory lien on any recovery obtained by the claimant through the claimant's personal injury claim; and

(e) a statement as to whether the claimant has received any Medicare or Medicaid benefits and, if so, a description of those benefits, including the amount.

(13) The claimant shall submit with the statement required under Subsection (12):

(a) a copy of all documentary evidence supporting the claimant's excess damages claim; and

(b) a signed authorization from the claimant allowing the special master to obtain all documents, including any billing statements, relevant to the claimant's excess damages claim from each person listed under Subsections (12)(a)(i), (b)(i), and (c).

(14) The special master:

(a) shall objectively consider evidence related to the claimant's excess damages claim;

(b) may hold a hearing in connection with the special master recommendation regarding the excess damages claim;

(c) may request or allow a responsible governmental entity or government attorney voluntarily to provide information or argument to help the special master understand the factors weighing against an excess damages claim; and

(d) after considering the relevant evidence, shall make a recommendation concerning, as directed by the board of examiners:

(i) the governmental entity's liability for the personal injury claim that forms the basis of the claimant's excess damages claim;

(ii) the amount of the excess damages claim; or

(iii) both the governmental entity's liability and the amount of the claimant's damages and excess damages claim.

(15) (a) Within 30 days after a hearing under Subsection (14)(b) or, if no hearing is held, after the special master's determination not to hold a hearing, the special master shall:

(i) prepare a written recommendation, including a brief, informal discussion of the factual and legal basis for the recommendation; and

(ii) deliver a copy of the written recommendation to the claimant, the attorney general, and the board of examiners.

(b) A written recommendation under Subsection (15)(a) may, but need not, contain findings of fact and conclusions of law.

**Section 8. Section 63J-1-312 is amended to read:**

**63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.**

(1) As used in this section:

(a) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(b) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

(i) granted by the Legislature in all appropriation acts and bills; and

(ii) identified as coming from the General Fund.

(c) "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(d) "General Fund revenue surplus" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(e) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(2) There is created within the General Fund a restricted account to be known as the General Fund Budget Reserve Account, which is designated to receive the legislative appropriations and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the

Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account.

(ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account would cause the balance in the account to exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 9% of General Fund appropriations for the fiscal year in which the General Fund revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315;

(B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(C) excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the General Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the General Fund revenue surplus under this Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315;

(B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(C) excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the General Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless otherwise specified in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the General Fund Budget Reserve Account within the past 10 years and have not yet been replaced.

(4) The Legislature may appropriate money from the General Fund Budget Reserve Account only to:

(a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund budget deficit occurs;

(b) pay some or all of state settlement agreements approved under Title 63G, Chapter 10, State Settlement Agreements Act;

(c) pay claims approved under Section 63G-9-304;

~~[(e)]~~ (d) pay retroactive tax refunds;

~~[(d)]~~ (e) resolve an Education Fund budget deficit; or

~~[(e)]~~ (f) finance an existing federally funded program or activity when:

(i) the federal funds expected to fund the federal program or activity are not available to fund the program or activity; and

(ii) the Legislature and governor concurrently determine that the program or activity is essential.

(5) Interest generated from investments of money in the General Fund Budget Reserve Account shall be deposited into the General Fund.