78B-1-101. Title.

This part is known as the "Jury and Witness Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-102. Definitions.

As used in this part:

(1) "Clerk" or "clerk of the court" means the person so designated by title and includes any deputy clerk.

(2) "Court" means trial court.

(3) "Jury" means a body of persons temporarily selected from the citizens of a particular county invested with the power to present and indict a person for a public offense or to try a question of fact.

(4) "Master jury list" means the source lists as prescribed by the Judicial Council under Section 78B-1-106.

(5) "Public necessity" means circumstances in which services performed by the prospective juror to members of the public in either a public or a private capacity cannot adequately be performed by others.

(6) "Qualified jury list" means the list of prospective jurors whose names are drawn at random from the master jury list and are determined to be qualified to serve as jurors.

(7) "Trial jury" means a body of persons selected from the citizens of a particular county before a court or officer of competent jurisdiction and sworn to try and determine by verdict a question of fact.

(8) "Undue hardship" means circumstances in which the prospective juror would:

(a) be required to abandon a person under his or her personal care or incur the cost of substitute care which is unreasonable under the circumstances;

(b) suffer extreme physical hardship due to an illness, injury, or disability; or

(c) incur substantial costs or lost opportunities due to missing an event that was scheduled prior to the initial notice of potential jury service.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-103. Jurors selected from random cross section -- Opportunity and obligation to serve.

(1) It is the policy of this state that:

(a) persons selected for jury service be selected at random from a fair cross section of the population of the county:

(b) all qualified citizens have the opportunity in accordance with this chapter to be considered for service; and

(c) all qualified citizens are obligated to serve when summoned, unless excused.

(2) A qualified citizen may not be excluded from jury service on account of race, color, religion, sex, national origin, age, occupation, disability, or economic status.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-104. Jury composition.

(1) A trial jury consists of:

(a) 12 persons in a capital case;

(b) eight persons in a noncapital first degree felony aggravated murder or other criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;

(c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;

(d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; and

(e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than $20,000, exclusive of costs, interest, and attorney fees.

(2) Except in the trial of a capital felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.

(3) (a) The verdict in a criminal case shall be unanimous.

(b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

(4) There is no jury in the trial of small claims cases.

(5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-105. Jurors -- Competency to serve -- Persons not competent to serve as jurors -- Court to determine disqualification.

(1) A person is competent to serve as a juror if the person is:

(a) a citizen of the United States;

(b) 18 years of age or older;

(c) a resident of the county; and

(d) able to read, speak, and understand the English language.

(2) A person who has been convicted of a felony which has not been expunged is not competent to serve as a juror.

(3) The court, on its own initiative or when requested by a prospective juror, shall determine whether the prospective juror is disqualified from jury service. The court shall base its decision on:

(a) information provided on the juror qualification form;

(b) an interview with the prospective juror; or

(c) other competent evidence.

(4) The clerk shall enter the court's determination in the records of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-106. Master jury list -- Inclusive -- Review -- Renewal -- Public examination.

(1) The Judicial Council shall designate one or more regularly maintained lists of

persons residing in each county as the source lists for the master jury list for that county. The master jury list shall be as inclusive of the adult population of the county as is reasonably practicable.

(2) The Judicial Council shall by rule provide for the biannual review of the master jury list to evaluate its inclusiveness of the adult population of the county.

(3) Not less than once every six months the Administrative Office of the Courts shall renew the master jury list for a county by incorporating any additions, deletions, or amendments to the source lists. The Administrative Office of the Courts shall include any additional source lists designated by the Judicial Council upon the next renewal of the master jury list for a county.

(4) The person having custody, possession, or control of any list used in compiling the master jury list shall make the list available to the Administrative Office of the Courts at all reasonable times without charge.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-107. Qualified jury list -- Term of availability -- Juror qualification form -- Content -- Joint jury list for court authorized.

(1) Prospective jurors shall be selected at random from the master jury list and, if qualified, placed on the qualified jury list. Except if necessary to complete service in a particular case, a prospective juror shall remain on the qualified jury list for no longer than six months or for such shorter period established by rule of the Judicial Council. The qualified jury list may be used by all courts within the county, but no person shall be summoned to serve as a juror in more than one court.

(2) The Judicial Council shall by rule govern the process for the qualification of jurors and the selection of qualified jurors for voir dire.

(3) The state court administrator shall develop a standard form for the qualification of jurors. The form shall include:

(a) the name, address, and daytime telephone number of the prospective juror;

(b) questions suitable for determining whether the prospective juror is competent under statute to serve as a juror; and

(c) the person's declaration that the responses to questions on the qualification form are true to the best of the person's knowledge.

Amended by Chapter 202, 2013 General Session

78B-1-108. Qualified prospective jurors not exempt from jury service.

No qualified prospective juror is exempt from jury service.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-109. Excuse from jury service -- Postponement.

(1) A person may be excused from jury service by the court upon a showing of undue hardship, public necessity, or that the person is incapable of jury service. The excused period may be for any period for which the grounds exist.

(2) The grounds for excusal from jury service shall be shown by affidavit, sworn

testimony, or other competent evidence.

(3) The court may postpone jury service upon a showing of good cause.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-110. Limitations on jury service.

In any two-year period, a person may not:

(1) be required to serve on more than one grand jury;

(2) be required to serve as both a grand and trial juror;

(3) be required to attend court for prospective jury service as a trial juror more than one court day, except if necessary to complete service in a particular case; or

(4) if summoned for prospective jury service and the summons is complied with as directed, be selected for the qualified jury list more than once.

Amended by Chapter 202, 2013 General Session

78B-1-111. Food allowance for jurors -- Sequestration costs.

(1) Jurors may be provided with a reasonable food allowance under the rules of the Judicial Council.

(2) When a jury has been placed in sequestration by order of the court, the necessary expenses for food and lodging shall be provided in accordance with the rules of the Judicial Council.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-112. Jurors -- Preservation of records.

All records and papers compiled in connection with the selection and service of jurors shall be preserved by the clerk for four years, or for any longer period ordered by the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-113. Jury not selected in conformity with chapter -- Procedure to challenge -- Relief available -- Exclusive remedy.

(1) Within seven days after the moving party discovered, or by the exercise of diligence could have discovered the grounds therefore, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings or to quash an indictment, or for other appropriate relief, on the ground of substantial failure to comply with this act in selecting a grand or trial jury.

(2) Upon motion filed under this section containing a sworn statement of acts which if true would constitute a substantial failure to comply with this act, the moving party may present testimony of the county clerk, the clerk of the court, any relevant records and papers not public or otherwise available used by the jury commission or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand or a trial jury there has been a substantial failure to comply with this act and it appears that actual and substantial injustice and prejudice has resulted or will result to

a party in consequence of the failure, the court shall stay the proceedings pending the selection of the jury in conformity with this act, quash an indictment, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-114. Jury fee assessments -- Payment.

(1) The court has discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees against either the plaintiff or defendant or their counsel, or to divide the cost and assess them against both plaintiff and defendant or their counsel, or additional parties plaintiff or defendant, if:

(a) a jury demand has been made and is later withdrawn within the 48 hours preceding the commencement of the trial; or

(b) the case is settled or continued within 48 hours of trial without just cause for not having settled or continued the case prior to the 48-hour period.

(2) The party assessed shall make payment to the clerk of the court within a prescribed period. Payment shall be enforced by contempt proceedings.

(3) The court clerk shall transfer the assessment to the state treasury, or the auditor of the city or county incurring the juror expenses.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-115. Jurors -- Penalties.

(1) A person who fails to respond timely to questions regarding qualification for jury service shall be in contempt of court and subject to penalties under Title 78B, Chapter 6, Part 3, Contempt.

(2) A person summoned for jury service who fails to appear or to complete jury service as directed shall be in contempt of court and subject to penalties under Title 78B, Chapter 6, Part 3, Contempt.

(3) Any person who willfully misrepresents a material fact regarding qualification for, excuse from, or postponement of jury service is guilty of a class C misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-116. Jurors -- Employer not to discharge or threaten employee for jury service -- Criminal penalty -- Civil action by employee.

(1) An employer may not deprive an employee of employment, threaten or take any adverse employment action, or otherwise coerce the employee regarding employment because the employee receives a summons, responds to it, serves as a juror, or a grand juror, or attends court for prospective jury or grand jury service.

(2) An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating

in the jury selection process, or for time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this statute who otherwise are not entitled to those benefits under company policies.

(3) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than $500 or imprisoned not more than six months, or both.

(4) If any employer discharges an employee in violation of this section, the employee within 30 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed reasonable attorney fees fixed by the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-117. Jurors and witnesses -- State payment for jurors and subpoenaed persons -- Appropriations and costs -- Expenses in justice court.

(1) The state is responsible for payment of all fees and expenses authorized by law for prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs in criminal actions in the courts of record and actions in the juvenile court. The state is responsible for payment of all fees and expenses authorized by law for jurors in the courts of record. For these payments, the Judicial Council shall receive an annual appropriation contained in a separate line item appropriation.

(2) If expenses, for the purposes of this section, exceed the line item appropriation, the administrator of the courts shall submit a claim against the state to the Board of Examiners and request the board to recommend and submit a supplemental appropriation request to the Legislature for the deficit incurred.

(3) In the justice courts, the fees, mileage, and other expenses authorized by law for jurors, prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs shall be paid by the municipality if the action is prosecuted by the city attorney, and by the county if the action is prosecuted by the county attorney or district attorney.

(4) Beginning July 1, 2014, the administrator of the courts shall provide a report during each interim to the Executive Offices and Criminal Justice Appropriations Subcommittee detailing expenses, trends, and efforts made to minimize expenses and maximize performance of the costs under this section.

(5) The funding of additional full-time equivalent employees shall be authorized by the Legislature through specific intent language.

Amended by Chapter 233, 2014 General Session

78B-1-118. Jurors and witnesses -- Judicial Council rules governing fee payment.

The Judicial Council shall adopt rules governing the method of payment of fees, mileage, and other expenses of jurors and witnesses, authorization for payment, record of payment, and the audit of payment records.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-119. Jurors and witnesses -- Fees and mileage.

(1) Every juror and witness legally required or in good faith requested to attend a trial court of record or not of record or a grand jury is entitled to:

(a) $18.50 for the first day of attendance and $49 per day for each subsequent day of attendance; and

(b) if traveling more than 50 miles, $1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines.

(2) Persons in the custody of a penal institution upon conviction of a criminal offense are not entitled to a witness fee.

(3) A witness attending from outside the state in a civil case is allowed mileage at the rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside the state in going only.

(4) If the witness is attending from outside the state in a criminal case, the state shall reimburse the witness under Section 77-21-3.

(5) A prosecution witness or a witness subpoenaed by an indigent defendant attending from outside the county but within the state may receive reimbursement for necessary lodging and meal expenses under rule of the Judicial Council.

(6) A witness subpoenaed to testify in court proceedings in a civil action shall receive reimbursement for necessary and reasonable parking expenses from the attorney issuing the subpoena under rule of the Judicial Council or Supreme Court.

(7) There is created within the General Fund, a restricted account known as the CASA Volunteer Account. A juror may donate the juror's fee to the CASA Volunteer Account in $18.50 or $49 increments. The Legislature shall annually appropriate money from the CASA Volunteer Account to the Administrative Office of the Courts for the purpose of recruiting, training, and supervising volunteers for the Court Appointed Special Advocate program established pursuant to Section 78A-6-902.

Amended by Chapter 138, 2014 General Session

78B-1-120. Jurors and witnesses -- Fees in criminal cases -- Daily report of attendance.

Every witness in a criminal case subpoenaed for the state, or for a defendant by order of the court at the expense of the state, and every juror, whether grand or trial, shall, unless temporarily excused, in person report daily to the clerk. No per diem shall be allowed for any day upon which attendance is not so reported.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-121. Jurors and witnesses -- Statement of service -- Certificate.

Whenever a grand juror, or a witness for the state before the grand jury, is finally discharged, the foreman of the grand jury shall furnish to the clerk of the district court a statement containing information necessary for the clerk to make the juror's or witness's certificate.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-122. Jurors and witnesses -- Justice court judge -- Certificate of attendance -- Records and reporting.

(1) Every justice court judge shall give to each person who has served before him as a juror or as a witness in a criminal cause when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate, in which must be stated:

(a) the name of the juror or witness;

(b) the title of the proceeding;

(c) the number of days in attendance;

(d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and

(e) the amount due.

(2) The certificate shall be presented to the county or city attorney. When certified as being correct, it shall be presented to the county or city auditor and when allowed by the county executive or town council, the auditor shall draw a warrant for it on the treasurer.

(3) Every justice court judge shall keep a record of all certificates issued. The record shall show all of the facts stated in each certificate. On the first Monday of each month a detailed statement of all certificates issued shall be filed with the treasurer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-123. Jurors and witnesses -- Limit of time for presentation of certificate.

Any holder of a witness's or juror's certificate specified in this title shall be required to present it to the county treasurer or to the county auditor, as the case may be, of the county where the certificate was issued within one year from the date of its issuance. If the same is not presented for payment within that time, it is invalid and will not be paid.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-124. Jurors and witnesses -- Statement of certificates -- Contents -- Payment by state.

(1) At the end of each quarter it shall be the duty of the county treasurer and the county auditor of each county to prepare in duplicate and verify under oath a full and complete itemized statement of all certificates issued by the clerk of the district court since the date of the last statement for mileage and attendance of:

(a) grand jurors;

(b) trial jurors engaged in the trial of criminal causes in the district court; and

(c) witnesses summoned by or on behalf of the state in criminal causes in the district court.

(2) The statement shall set forth in detail for each certificate:

(a) the number of the certificate;
(b) the date issued;
(c) the name of the person in whose favor it was issued;
(d) the nature of the service rendered; and
(e) any other information as may be necessary and required by the state auditor.
(3) Within 30 days of the end of the quarter one of these statements shall be transmitted to the state auditor and the other filed in the office of the county clerk. Upon the timely receipt of this statement the state auditor shall, unless it is found to be incorrect, draw a warrant in favor of the county treasurer upon the state treasurer for the whole amount of jurors' and witnesses' certificates as shown by the statement, and transmit it to the county treasurer.
(4) The county treasurer shall hold the funds drawn from the state treasury upon the certificates for mileage and attendance of jurors and witnesses as a separate fund for the redemption of jurors' and witnesses' certificates.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-125. Jurors and witnesses -- Certifying excessive fees a felony.
Any clerk or judge of any court, county attorney, district attorney, or other officer who certifies false information as a fact, whereby any witness or juror shall be allowed a greater sum than otherwise entitled to under the provisions of this title, is guilty of a felony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-126. Jurors and witnesses -- Purchase of certificate forbidden -- Penalty.
(1) No person connected officially with any of the district courts of this state, and no state, district, county or precinct officer, shall purchase or cause to be purchased any certificate issued to any juror or witness under the provisions of this title.
(2) Any person who violates the provisions of this section is guilty of a misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-127. Witnesses -- Competency.
Every person is competent to be a witness except as otherwise provided in the Utah Rules of Evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-128. Who may be witnesses -- Jury to judge credibility.
(1) All persons, without exception, otherwise than as specified in this part, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses.
(2) Neither parties nor other persons who have an interest in the event of an

action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief.

(3) The credibility of a witness may be questioned by:

(a) the manner in which the witness testifies;

(b) the character of the witness testimony;

(c) evidence affecting the witness' character for truth, honesty, or integrity;

(d) the witness' motives; or

(e) contradictory evidence.

(4) The jury is the exclusive judge of credibility.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-129. Witnesses -- Subpoena defined.

The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. The person may also be required to bring any books, documents, or other things under the person's control which is required to be produced in evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-130. Witnesses -- Duty when served with subpoena.

A witness served with a subpoena shall:

(1) attend at the time appointed with any papers required by the subpoena;

(2) answer all pertinent and legal questions; and

(3) unless sooner discharged, remain until the testimony is closed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-131. Witnesses -- Liability to forfeiture and damages.

A witness who disobeys a subpoena shall, in addition to any penalty imposed for contempt, be liable to the party aggrieved in the sum of $100, and all damages sustained by the failure of the witness to attend. Forfeiture and damages may be recovered in a civil action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-132. Employer not to discharge or threaten employee for responding to subpoena -- Criminal penalty -- Civil action by employee.

(1) An employer may not deprive an employee of employment or threaten or otherwise coerce the employee regarding employment because the employee attends a deposition or hearing in response to a subpoena.

(2) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than $500 or imprisoned not more than six months or both.

(3) If an employer violates this section, in addition to any other remedy, the

employee may bring a civil action in district court for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed reasonable attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-133. Witnesses -- Judge or juror may be witness -- Procedure.

The judge or any juror may be called as a witness by either party. It is in the discretion of the court to order the trial to be postponed, suspended, or take place before another judge or jury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-134. Witnesses -- Duty to answer questions -- Privilege.

(1) A witness shall answer all questions legal and pertinent to the matter in issue, although an answer may establish a claim against the witness.

(2) A witness need not give an answer which will subject him to punishment for a felony.

(3) A witness need not give an answer which will degrade his character, unless it is to the very fact in issue or to a fact from which the fact in issue would be presumed.

(4) A witness must answer as to the fact of any previous conviction of a felony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-135. Witnesses -- Proceedings in aid of or supplemental to attachment, garnishment, or execution.

(1) Notwithstanding the provisions of Section 78B-1-134, a party or a witness examined in proceedings in aid of or supplemental to attachment, garnishment, or execution is not excused from answering a question on the ground that;

(a) the answer will tend to convict the party or witness of the commission of a fraud;

(b) the answer will prove the party or witness has been a party or privy to, or has knowledge of, a conveyance, assignment, transfer or other disposition of property concerned for any purpose;

(c) the party, witness, or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in the debtor's behalf.

(2) An answer cannot be used as evidence against the person so answering in a criminal action or proceeding, except in an action for perjury against the person for falsely testifying.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-136. Witnesses -- Rights.

It is the right of a witness to be protected from irrelevant, improper or insulting questions, and from harsh or insulting demeanor, to be detained only so long as the interests of justice require it, and to be examined only as to matters legal and pertinent to the issue.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-137. Witnesses -- Privileged communications.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(1) (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.

(b) This exception does not apply:

(i) to a civil action or proceeding by one spouse against the other;

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other;

(iii) to the crime of deserting or neglecting to support a spouse or child;

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

(4) A physician or surgeon cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall be waived by the patient in an action in which the patient places the patient's medical condition at issue as an element or factor of the claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made in official confidence when the public interests would suffer by the disclosure.

(6) A sexual assault counselor as defined in Section 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 77-38-203 made by the victim.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-138. Witnesses -- Exempt from arrest in civil action.

Every person who has been in good faith served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other person, in a case where the disobedience of the witness may be punished as a contempt, is exempt from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-139. Witnesses -- Unlawful arrest -- Void -- Damages recoverable.

The arrest of a witness contrary to Section 78B-1-138 is void, and when willfully made is a contempt of the court. The person making the arrest is responsible to the witness arrested for double the amount of the damages which may be assessed against the witness, and is also liable to an action at the suit of the party serving the witness with the subpoena for the damages sustained by the party in consequence of the arrest.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-140. Liability of officer making arrest.

(1) An officer is not liable for making the arrest in ignorance of the facts creating the exemption, but is liable for any subsequent detention of the witness, if the witness claims the exemption and makes an affidavit stating:

(a) he has been served with a subpoena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpoena was issued;

(b) he has not been served by his own procurement, with the intention of avoiding an arrest; and

(c) he is at the time going to the place of attendance, returning therefrom, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-141. Witnesses -- Discharge when unlawfully arrested.

The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of Section 78B-1-138. If the court has adjourned before the arrest or before application for the discharge, a judge of the court may grant the discharge.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-142. Witnesses -- Oaths -- Who may administer.

Every court, every judge, clerk and deputy clerk of any court, every justice, every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-143. Witnesses -- Form of oath.

(1) An oath or affirmation in an action or proceeding may be administered in the following form:

You do solemnly swear (or affirm) that the evidence you shall give in this issue (or matter) pending between ____ and ____ shall be the truth, the whole truth and nothing but the truth, so help you God (or, under the pains and penalties of perjury).

(2) The person swearing or affirming shall express assent when addressed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-144. Witnesses -- Affirmation or declaration instead of oath allowed.

Any person may, instead of taking an oath, opt to make a solemn affirmation or declaration, by assenting, when addressed in the following form:

"You do solemnly affirm (or declare) that... ." etc., as in Section 78B-1-143.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-145. Witnesses -- Variance in form of swearing to suit beliefs.

(1) Whenever the court before which a person is offered as a witness is satisfied that the person has a peculiar mode of swearing, connected with or in addition to the usual form, which in the person's opinion is more solemn or obligatory, the court may in its discretion adopt that mode.

(2) A person who believes in a religion other than the Christian religion may be sworn according to the particular ceremonies of the person's religion, if there are any.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-146. Witnesses -- Interpreters -- Subpoena -- Contempt -- Costs.

(1) When a witness does not understand and speak the English language, an interpreter shall be sworn in to interpret. Any person may be subpoenaed by any court or judge to appear before the court or judge to act as an interpreter in any action or proceeding. Any person so subpoenaed who fails to attend at the time and place named is guilty of a contempt.

(2) The Judicial Council may establish a fee for the issuance and renewal of a license of a certified court interpreter. Any fee established under this section shall be deposited as a dedicated credit to the Judicial Council.

(3) If the court appoints an interpreter, the court may assess all or part of the fees and costs of the interpreter against the person for whom the service is provided.

The court may not assess interpreter fees or costs against a person found to be impecunious.

Amended by Chapter 391, 2010 General Session

78B-1-147. Witnesses -- Fees in civil cases -- How paid -- Taxed as costs.

(1) The fees and compensation of witnesses in all civil causes shall be paid by the party who causes the witnesses to attend. A person is not obliged to attend court in a civil cause when subpoenaed unless the person's:

(a) fees for one day's attendance are tendered or paid on demand; or

(b) fees for attendance for each day are tendered or paid on demand.

(2) The fees of witnesses paid in civil causes may be taxed as costs against the losing party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-148. Witnesses -- Only one fee per day allowed.

No witness shall receive fees in more than one criminal cause on the same day.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-149. Witnesses -- Officials subpoenaed not entitled to fee or per diem -- Exception.

No officer of the United States, or the state, or of any county, incorporated city or town within the state, may receive any witness fee or per diem when testifying in a criminal proceeding unless the officer is required to testify at a time other than during normal working hours.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-150. Witnesses -- When criminal defense witness may be called at expense of state.

A witness for a defendant in a criminal cause may not be subpoenaed at the expense of the state, county, or city, except upon order of the court. The order shall be made only upon affidavit of the defendant, showing:

(1) the defendant is impecunious and unable to pay the per diems of the witness;

(2) the evidence of the witness is material for defendant's defense as advised by counsel, if counsel is in place; and

(3) the defendant cannot safely proceed to trial without the witness.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-151. Witnesses -- Expenses for expert witnesses.

(1) The court may appoint any expert witness agreed upon by the parties or of its own selection. The court shall inform the expert of required duties in writing and a

copy shall be filed with the court record.

(2) The appointed expert shall advise the court and the parties of findings and may be called to testify by the court or by any party. The expert witness is subject to cross-examination by each party.

(3) The court shall determine the reasonable compensation of the expert and order payment. The parties may call expert witnesses of their own at their own expense. Upon a showing that a defendant is financially unable to pay the compensation of an expert whose services are necessary for an adequate defense, the compensation shall be paid as if the expert were called on behalf of the prosecution.

(4) Payment by the court for an expert witness in a criminal case is limited to the fee and mileage allowance for witnesses under Section 78B-1-119 and necessary meals and lodging expenses as provided by rule of the Judicial Council. Compensation of an expert witness beyond the statutory fee and mileage allowance shall be paid by the parties under Subsection (3).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-152. Witnesses -- Prohibition of expert witness contingent fees in civil actions.

(1) As used in this section, "contingent fee agreement" means an agreement for the provision of testimony or other evidence and related services by an expert witness in a civil action that specifies:

(a) the payment of compensation to the expert witness for the testimony, other evidence, and services is contingent, in whole or in part, upon a judgment being rendered in favor of the plaintiff or defendant in a civil action, upon a favorable settlement being obtained by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being awarded in a judgment or settlement damages in at least a specified amount; and

(b) upon satisfaction of the contingency described in Subsection (1)(a), the compensation to be paid to the expert witness is in a fixed amount or an amount to be determined by a specified formula, including, but not limited to, a percentage of a judgment rendered in favor of the plaintiff or a percentage of a favorable settlement obtained by the plaintiff.

(2) A plaintiff or defendant in a civil action may not engage an expert witness by means of a contingent fee agreement unless approval is sought and received from the court.

(3) An expert witness may be engaged by the plaintiff or defendant on the contingency that the expert actually qualify as an expert. Once the witness is qualified as an expert Subsection (2) applies to his continued participation in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-201. Definitions.

As used in this part:

(1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, authority, department, agency, legislative body, or of any

proceeding of any nature where a qualified interpreter is required under this part.

(2) "Hearing-impaired person" and "hearing-impaired parent" means a deaf or hard of hearing person who, because of sensory or environmental conditions, requires the assistance of a qualified interpreter or other special assistance for communicative purposes.

(3) "Necessary steps" or "necessary services" include provisions of qualified interpreters, lip reading, pen and paper, typewriters, closed-circuit television with closed-caption translations, computers with print-out capability, and telecommunications devices for the deaf or similar devices.

(4) "Qualified interpreter" means a sign language or oral interpreter as provided in Sections 78B-1-203 and 78B-1-206 of this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-202. Proceedings at which interpreter is to be provided for hearing impaired.

(1) If a hearing-impaired person is a party or witness at any stage of any judicial or quasi-judicial proceeding in this state or in its political subdivisions, including civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing-impaired person may be subjected to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired person and to interpret the hearing-impaired person's testimony. If the hearing-impaired person does not understand sign language, the appointing authority shall take necessary steps to ensure that the hearing-impaired person may effectively and accurately communicate in the proceeding.

(2) If a juvenile whose parent or parents are hearing-impaired is brought before a court for any reason whatsoever, the court shall appoint and pay for a qualified interpreter to interpret the proceedings to the hearing-impaired parent and to interpret the hearing-impaired parent's testimony. If the hearing-impaired parent or parents do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that the hearing-impaired person may effectively and accurately communicate in the proceeding.

(3) In any hearing, proceeding, or other program or activity of any department, board, licensing authority, commission, or administrative agency of the state or of its political subdivisions, the appointing authority shall appoint and pay for a qualified interpreter for the hearing-impaired participants if the interpreter is not otherwise compensated for those services. If the hearing-impaired participants do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that hearing-impaired persons may effectively and accurately communicate in the proceeding.

(4) If a hearing-impaired person is a witness before any legislative committee or subcommittee, or legislative research or interim committee or subcommittee or commission authorized by the state Legislature or by the legislative body of any political subdivision of the state, the appointing authority shall appoint and pay for a qualified

interpreter to interpret the proceedings to the hearing-impaired person and to interpret the hearing-impaired person's testimony. If the hearing-impaired witness does not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that hearing-impaired witness may effectively and accurately communicate in the proceeding.

(5) If it is the policy and practice of a court of this state or of its political subdivisions to appoint counsel for indigent people, the appointing authority shall appoint and pay for a qualified interpreter or other necessary services for hearing-impaired, indigent people to assist in communication with counsel in all phases of the preparation and presentation of the case.

(6) If a hearing-impaired person is involved in administrative, legislative, or judicial proceedings, the appointing authority shall recognize that family relationship between the particular hearing-impaired person and an interpreter may constitute a possible conflict of interest and select a qualified interpreter who will be impartial in the proceedings.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-203. Effectiveness of interpreter determined.

Before appointing an interpreter, the appointing authority shall make a preliminary determination, on the basis of the proficiency level established by the Utah division of rehabilitation services and on the basis of the hearing-impaired person's testimony, that the interpreter is able to accurately communicate with and translate information to and from the hearing-impaired person involved. If the interpreter is not able to provide effective communication with the hearing-impaired person, the appointing authority shall appoint another qualified interpreter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-204. Appointment of more qualified interpreter.

If a qualified interpreter is unable to render a satisfactory interpretation, the appointing authority shall appoint a more qualified interpreter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-205. Readiness of interpreter prerequisite to commencement of proceeding.

If an interpreter is required to be appointed under this part, the appointing authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure effective communication with the hearing-impaired participants.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-206. List of qualified interpreters -- Use -- Appointment of another.

(1) The Utah division of rehabilitation services shall establish, maintain, update,

and distribute a list of qualified interpreters.

(2) When an interpreter is required under this part, the appointing authority shall use one of the interpreters on the list provided by the Utah division of rehabilitation services. If none of the listed interpreters are available or are able to provide effective interpreting with the particular hearing-impaired person, then the appointing authority shall appoint another qualified interpreter who is able to accurately and simultaneously communicate with and translate information to and from the particular hearing-impaired person involved.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-207. Oath of interpreter.

Before he or she begins to interpret, every interpreter appointed under this part shall take an oath that he or she will make a true interpretation in an understandable manner to the best of his or her skills and judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-208. Compensation of interpreter.

An interpreter appointed under this part is entitled to a reasonable fee for his or her services, including waiting time and reimbursement for necessary travel and subsistence expenses. The fee shall be based on a fee schedule for interpreters recommended by the division of rehabilitation services or on prevailing market rates. Reimbursement for necessary travel and subsistence expenses shall be at rates provided by law for state employees generally. Compensation for interpreter services shall be paid by the appointing authority if the interpreter is not otherwise compensated for those services.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-209. Waiver of right to interpreter.

The right of a hearing-impaired person to an interpreter may not be waived, except by a hearing-impaired person who requests a waiver in writing. The waiver is subject to the approval of counsel to the hearing-impaired person, if existent, and is subject to the approval of the appointing authority. In no event may the failure of the hearing-impaired person to request an interpreter be considered a waiver of that right.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-210. Privileged communications.

If a hearing-impaired person communicates through an interpreter to any person under such circumstances that the communication would be privileged and the person could not be compelled to testify as to the communications, this privilege shall apply to the interpreter as well.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-211. Video recording of testimony of hearing-impaired person.

The appointing authority, on his or her own motion or on the motion of a party to the proceedings, may order that the testimony of the hearing-impaired person and its interpretation be electronically recorded by a video recording device for use in verification of the official transcript of the proceedings.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-101. Definitions of "tax title" and "action."

(1) The word "action" as used in this chapter includes counterclaims and cross-complaints and all other civil actions in which affirmative relief is sought.

(2) The term "tax title" as used in Sections 59-2-1364 and 78B-2-206, and the related amended Sections 78B-2-204, 78B-2-208, and 78B-2-214, means any title to real property, whether valid or not, which has been derived through, or is dependent upon, any sale, conveyance, or transfer of property in the course of a statutory proceeding for the liquidation of any tax levied against the property whereby the property is relieved from a tax lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-102. Time for commencement of actions generally.

Civil actions may be commenced only within the periods prescribed in this chapter, after the cause of action has accrued, except in specific cases where a different limitation is prescribed by statute.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-103. Action barred in another state barred in Utah.

A cause of action which arises in another jurisdiction, and which is not actionable in the other jurisdiction by reason of the lapse of time, may not be pursued in this state, unless the cause of action is held by a citizen of this state who has held the cause of action from the time it accrued.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-104. Effect of absence from state.

If a cause of action accrues against a person while the person is out of the state and the person is not subject to the jurisdiction of the courts of this state in accordance with Section 78B-3-205, the action may be commenced within the term as limited by this chapter after his return to the state. If after a cause of action accrues the person departs from the state, the time of his absence is not part of the time limited for the commencement of the action unless Section 78B-3-205 applies.

Amended by Chapter 342, 2009 General Session

78B-2-105. Effect of death.

(1) If a person entitled to bring an action dies before the expiration of the statute of limitations and the cause of action survives, an action may be brought by his representatives after the expiration of the time and within one year from his death.

(2) If a person against whom an action may be brought dies before the expiration of the statute of limitations and the cause of action survives, an action may be commenced against the representatives after the expiration of the time and within one year after the issue of letters testamentary or of administration.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-106. Effect of death of defendant outside this state.

If a person against whom a cause of action exists dies outside the state, the time which elapses between his death and the expiration of one year after this state issues letters testamentary or letters of administration is not a part of the time limited for the commencement of an action against his executor or administrator.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-107. Effect of war.

When a person is an alien subject or a citizen of a country at war with the United States, the duration of the war may not be counted as part of the statute of limitations for the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-108. Effect of disability -- Minority or mental incompetence.

A person may not bring an action while under the age of majority or mentally incompetent without a legal guardian. During the time the person is underage or incompetent, the statute of limitations for a cause of action other than for the recovery of real property may not run.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-109. Disability must exist when right of action accrues.

A person may not take advantage of a disability, unless it existed when the person's right of action accrued.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-110. All disabilities must be removed.

When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until all are removed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-111. Failure of action -- Right to commence new action.

(1) If any action is timely filed and the judgment for the plaintiff is reversed, or if the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the action has expired, the plaintiff, or if he dies and the cause of action survives, his representatives, may commence a new action within one year after the reversal or failure.

(2) On and after December 31, 2007, a new action may be commenced under this section only once.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-112. Effect of injunction or prohibition.

The duration of an injunction or statutory prohibition which delays the filing of an action may not be counted as part of the statute of limitations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-113. Effect of payment, acknowledgment, or promise to pay.

(1) An action for recovery of a debt may be brought within the applicable statute of limitations from the date:

(a) the debt arose;

(b) a written acknowledgment of the debt or a promise to pay is made by the debtor; or

(c) a payment is made on the debt by the debtor.

(2) If a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground for defense.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 123, 2008 General Session

78B-2-114. Separate trial of statute of limitations issue in malpractice actions.

(1) An issue raised by the defense regarding the statute of limitations in a case may be tried separately if the action is for professional negligence or for rendering professional services without consent, and against:

(a) a physician;

(b) a surgeon;

(c) a dentist;

(d) an osteopathic physician;

(e) a chiropractor;

(f) a physical therapist;

(g) a registered nurse;

(h) a clinical laboratory bioanalyst;

(i) a clinical laboratory technologist; or

(j) a licensed hospital, person, firm, or corporation as the employer of any of the persons in Subsection (1)(a) through (i).

(2) The issue raised may be tried before any other issues in the case are tried. If

the issue raised by the defense of the statute of limitations is finally determined in favor of the plaintiff, the remaining issues shall then be tried.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-115. Actions by state or other governmental entity.

Except for the provisions of Section 78B-2-116, the limitations in this chapter apply to actions brought in the name of or for the benefit of the state or other governmental entity the same as to actions by private parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-116. Statute of limitations -- Asbestos damages -- Action by state or governmental entity.

(1) (a) A statute of limitations or repose may not bar an action by the state or other governmental entity to recover damages from any manufacturer of any construction materials containing asbestos, when the action arises out of the manufacturer's providing the materials, directly or through other persons, to the state or other governmental entity or to a contractor on behalf of the state or other governmental entity.

(b) Subsection (1)(a) provides for actions not yet barred, and also acts retroactively to permit actions under this section that are otherwise barred.

(2) As used in this section, "asbestos" means asbestiform varieties of:

(a) chrysotile (serpentine);

(b) crocidolite (riebeckite);

(c) amosite (cummingtonite-grunerite);

(d) anthophyllite;

(e) tremolite; or

(f) actinolite.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-117. Statute of limitations -- Asbestos damages.

(1) (a) Notwithstanding any other provision of law, a statute of limitation or repose may not bar an action to recover damages from any manufacturer of any construction materials containing asbestos and arising out of the manufacturer's providing of the materials, directly or through other persons, for use in construction of any building within the state until July 1, 1991, or until three years after the person or entity bringing the action discovers or with reasonable diligence could have discovered the injury or damages, whichever is later.

(b) Subsection (1)(a) provides a statute of limitation for the specified actions, and also acts retroactively to permit, within time limits, the commencement of actions under this section that are otherwise barred.

(2) As used in this section, "asbestos" means asbestiform varieties of:

(a) chrysotile (serpentine);

(b) crocidolite (riebeckite);

(c) amosite (cummingtonite-grunerite);
(d) anthophyllite;
(e) tremolite; or
(f) actinolite.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-201. Actions by the state.

The state may not bring an action against any person for or with respect to any real property, its issues or profits, based upon the state's right or title to the real property, unless:

(1) the right or title to the property accrued within seven years before any action or other proceeding is commenced; or

(2) the state or those from whom it claims received all or a portion of the rents and profits from the real property within the immediately preceding seven years.

Amended by Chapter 146, 2009 General Session

78B-2-202. Actions by patentees or grantees from state.

A person receiving letters patent or a grant of real property from the state may not bring an action based on the patent or grant unless the state would have been able to bring an action had the patent or grant not been made.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-203. When letters patent or grants declared void.

When letters patent or grants of real property issued or made by the state are declared void by a court of competent jurisdiction, an action for the recovery of the property shall be brought either by the state, or by any subsequent patentee or grantee of the property, his heirs or assigns, within seven years after such determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-204. Seizure or possession within seven years necessary.

An action for the recovery or possession of real property may not be maintained, unless it appears the plaintiff, his ancestor, grantor, or predecessor owned or possessed the property in question within seven years before the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-205. Seizure or possession within seven years -- Proviso -- Tax title.

(1) An action for the recovery or possession of real property may not be maintained, unless the plaintiff or his predecessor owned or possessed the property within seven years before the commencement of the action.

(2) Actions or defenses brought to recover, take possession of, quiet title, or

determine the ownership of real property against the holder of a tax title to the property, may not be commenced more than four years after the date of the tax deed, conveyance, or transfer creating the tax title unless the person commencing the action or defense or his predecessor has actually occupied or been in possession of the property within four years prior to the commencement of the action or defense.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-206. Holder of tax title -- Limitations of action or defense -- Proviso.

An action or defense to recover, take possession of, quiet title to, or determine the ownership of real property may not be commenced against the holder of a tax title after the expiration of four years from the date of the sale, conveyance, or transfer of the tax title to any county, or directly to any other purchaser at any public or private tax sale. This section may not bar any action or defense by the owner of the legal title to the property which he or his predecessor actually occupied or possessed within four years from the commencement of an action or defense. This section may not bar any defense by a city or town to an action by the holder of a tax title, to the effect that the city or town holds a lien against the property which is equal or superior to the claim of the holder of the tax title.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-207. Actions or defenses founded upon title to real estate.

An action, defense, or counterclaim to an action based upon title to the property or entitlement to the rents or profits from the property shall be brought:

(1) not later than seven years after the act on which it is based; and

(2) by the ancestor, predecessor, or grantor of the person who owned or possessed the property for seven years before the act in Subsection (1) took place.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-208. Adverse possession -- Possession presumed in owner.

(1) In an action for the recovery of real property, it is presumed that:

(a) the person establishing legal title to the property has been in possession of the property; and

(b) any occupation of the property has been under and in subordination to the legal title.

(2) Subsection (1) may be rebutted by a showing that the property has been held and possessed adversely to the legal title for at least seven years before commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-209. Adverse possession -- Presumption -- Proviso -- Tax title.

(1) In an action for the recovery or possession of real property, to quiet title to or determine the property's owner, the person establishing a legal title to the property is

presumed to have been in possession of the property within the time required by law. The occupation of the property by any other person is considered to have been under and in subordination to the legal title, unless it appears that the property has been held and possessed adversely to the legal title for seven years before the commencement of the action.

(2) If in any action a party establishes prima facie evidence of ownership of any real property under a tax title held by him and his predecessors for four years prior to the commencement of the action, he is presumed to be the owner of the property by adverse possession. This presumption may be rebutted if it appears that the owner of the legal title or his predecessor has actually occupied or been in possession of the property under the title or that the tax title owner and his predecessors have failed to pay all the taxes levied or assessed upon the property within the four-year period.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-210. Adverse possession -- Under written instrument or judgment.

(1) Property is considered to have been adversely held if a person in possession of the property, either personally or through another:

(a) possesses a written document purporting to convey title; or

(b) possesses a decree or judgment from a court of competent jurisdiction conveying title; and

(c) has occupied the property continuously for at least seven years.

(2) If the property consists of a tract divided into lots, the possession of one lot is not considered a possession of any other lot in the same tract.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-211. What constitutes adverse possession under written instrument.

For the purpose of constituting an adverse possession by any person claiming a title based upon a written instrument or a judgment or decree, the property is considered to have been possessed if:

(1) it has been usually cultivated or improved;

(2) it has been protected by a substantial enclosure;

(3) although not enclosed, it has been used for the supply of fuel, fencing timber, for the purpose of husbandry, or for pasturage or for the ordinary use of the occupant; or

(4) where a known farm or single lot has been partly improved, the portion of the farm or lot which may have been left not cleared or not inclosed according to the usual course and custom of the adjoining county is considered to have been occupied for the same length of time as the part improved and cultivated.

Amended by Chapter 146, 2009 General Session

78B-2-212. Adverse possession -- Under claim not founded on written instrument or judgment.

Where it appears that there has been an actual continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land actually occupied and no other, is considered to have been held adversely.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-213. What constitutes adverse possession not under written instrument.

Land is considered to be possessed and occupied adversely by a person claiming title not founded upon a written instrument, judgment, or decree in the following cases only, where:

(1) it has been protected by a substantial enclosure;

(2) it has been usually cultivated or improved; and

(3) labor or money amounting to the sum of $5 per acre has been expended upon dams, canals, embankments, aqueducts, or otherwise for the purpose of irrigating the land.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-214. Adverse possession -- Continuous -- Seven years -- Taxes paid.

Adverse possession may not be established unless it is shown that the land has been occupied and claimed continuously for seven years, and that the party and the party's predecessors and grantors have paid all taxes which have been levied and assessed upon the land according to law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-215. Adverse possession -- Payment of taxes -- Proviso -- Tax title.

Payment of all the taxes levied and assessed upon the real property for a period of not less than four years by the holder of a tax title to the real property or his predecessors is sufficient to satisfy the requirements of this chapter regarding the payment of taxes necessary to establish adverse possession.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-216. Adverse possession of certain real property.

(1) As used in this section:

(a) "Government entity" means a town, city, county, metropolitan water district, or local district.

(b) "Water facility" means any improvement or structure used, or intended to be used, to divert, convey, store, measure, or treat water.

(2) Except as provided in Subsection (3), a person may not acquire by adverse possession, prescriptive use, or acquiescence any right in or title to any real property:

(a) held by a government entity; and

(b) designated for any present or future public use, including:
(i) a street;
(ii) a lane;
(iii) an avenue;
(iv) an alley;
(v) a park;
(vi) a public square;
(vii) a water facility; or
(viii) a water conveyance right-of-way or water conveyance corridor.
(3) Notwithstanding Subsection (2) and subject to Subsection (4), a person may acquire title if:
(a) a government entity sold, disposed of, or conveyed the right in, or title to, the real property to a purchaser for valuable consideration; and
(b) the purchaser or the purchaser's grantees or successors in interest have been in exclusive, continuous, and adverse possession of the real property for at least seven consecutive years after the day on which the real property was sold, disposed of, or conveyed as described in Subsection (3)(a).
(4) A person who acquires title under Subsection (3) is subject to all other applicable provisions of law.

Amended by Chapter 377, 2014 General Session

78B-2-217. Adverse possession -- Possession of tenant considered possession of landlord.

When a landlord and tenant relationship exists between persons, the possession of the tenant is considered the possession of the landlord until the expiration of seven years after the termination of the tenancy, or, if there has been no written lease, until seven years from the time of the last payment of rent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-218. Adverse possession -- Possession not affected by descent cast.

The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-219. Adverse possession -- Action to redeem mortgage of real property.

An action to redeem a mortgage of real property, with or without an account of rents and profits, may not be brought by the mortgagor, or those claiming under him, against the mortgagee in possession, or those claiming under him, unless an adverse possession of the mortgaged premises for seven years after breach of some condition of the mortgage has been continuously maintained by the mortgagor or those claiming

under him.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-220. Redemption when more than one mortgagor.

If there is more than one mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain an action under the provisions of this article, any one of them who is entitled to maintain an action may redeem a divided or undivided part of the mortgaged premises as his interest may appear, and have an accounting for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of the money as the value of his divided or undivided interest in the premises bears to the whole of the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-221. Actions to recover estate sold by guardian.

An action for the recovery of an estate sold by a guardian shall be brought by the ward, or any person claiming under the ward, within three years after the termination of the guardianship.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-222. Actions to recover estate sold by executor or administrator.

An action for the recovery of an estate sold by an executor or administrator in the course of a probate proceeding shall be maintained by an heir or other person claiming under the decedent within three years after the sale. An action to set aside the sale shall be instituted and maintained within three years from the discovery of the fraud or other lawful grounds upon which the action is based.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-223. Minority or disability prevents running of period.

Sections 78B-2-221 and 78B-2-222 shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues. Section 78B-2-224 shall apply in those circumstances.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-224. Disabilities -- Time tolled.

A statute of limitations may not be applied to a person's ability to bring an action during a period in which the person is:

(1) a minor; or

(2) mentally incompetent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-225. Actions related to improvements in real property.

(1) As used in this section:

(a) "Abandonment" means that there has been no design or construction activity on the improvement for a continuous period of one year.

(b) "Action" means any claim for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach of duty arising out of or related to the design, construction, or installation of an improvement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law.

(c) "Completion of improvement" means the date of substantial completion of an improvement to real property as established by the earliest of:

(i) a Certificate of Substantial Completion;

(ii) a Certificate of Occupancy issued by a governing agency; or

(iii) the date of first use or possession of the improvement.

(d) "Improvement" means any building, structure, infrastructure, road, utility, or other similar man-made change, addition, modification, or alteration to real property.

(e) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, proprietorship, or any other legal or governmental entity.

(f) "Provider" means any person contributing to, providing, or performing studies, plans, specifications, drawings, designs, value engineering, cost or quantity estimates, surveys, staking, construction, and the review, observation, administration, management, supervision, inspections, and tests of construction for or in relation to an improvement.

(2) The Legislature finds that:

(a) exposing a provider to suits and liability for acts, errors, omissions, or breach of duty after the possibility of injury or damage has become highly remote and unexpectedly creates costs and hardships to the provider and the citizens of the state;

(b) these costs and hardships include liability insurance costs, records storage costs, undue and unlimited liability risks during the life of both a provider and an improvement, and difficulties in defending against claims many years after completion of an improvement;

(c) these costs and hardships constitute clear social and economic evils;

(d) the possibility of injury and damage becomes highly remote and unexpected seven years following completion or abandonment; and

(e) except as provided in Subsection (7), it is in the best interests of the citizens of the state to impose the periods of limitation and repose provided in this chapter upon all causes of action by or against a provider arising out of or related to the design, construction, or installation of an improvement.

(3) (a) An action by or against a provider based in contract or warranty shall be commenced within six years of the date of completion of the improvement or abandonment of construction. Where an express contract or warranty establishes a different period of limitations, the action shall be initiated within that limitations period.

(b) All other actions by or against a provider shall be commenced within two years from the earlier of the date of discovery of a cause of action or the date upon which a cause of action should have been discovered through reasonable diligence. If the cause of action is discovered or discoverable before completion of the improvement

or abandonment of construction, the two-year period begins to run upon completion or abandonment.

(4) Notwithstanding Subsection (3)(b), an action may not be commenced against a provider more than nine years after completion of the improvement or abandonment of construction. In the event the cause of action is discovered or discoverable in the eighth or ninth year of the nine-year period, the injured person shall have two additional years from that date to commence an action.

(5) Subsection (4) does not apply to an action against a provider:

(a) who has fraudulently concealed his act, error, omission, or breach of duty, or the injury, damage, or other loss caused by his act, error, omission, or breach of duty; or

(b) for a willful or intentional act, error, omission, or breach of duty.

(6) If a person otherwise entitled to bring an action did not commence the action within the periods prescribed by Subsections (3) and (4) solely because that person was a minor or mentally incompetent and without a legal guardian, that person shall have two years from the date the disability is removed to commence the action.

(7) This section shall not apply to an action for the death of or bodily injury to an individual while engaged in the design, installation, or construction of an improvement.

(8) The time limitation imposed by this section does not apply to any action against any person in actual possession or control of the improvement as owner, tenant, or otherwise, at the time any defective or unsafe condition of the improvement proximately causes the injury for which the action is brought.

(9) This section does not extend the period of limitation or repose otherwise prescribed by law or a valid and enforceable contract.

(10) This section does not create or modify any claim or cause of action.

(11) This section applies to all causes of action that accrue after May 3, 2003, notwithstanding that the improvement was completed or abandoned before May 3, 2004.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-226. Boundary surveys.

An action against a surveyor for acts, errors, or omissions in the performance of a boundary survey filed pursuant to Section 17-23-17 shall be brought within five years of the date of the filing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-301. Within six months.

An action may be brought within six months against a tax collector or the tax collector's designee:

(1) to recover any goods, wares, merchandise, other property seized in his official capacity, or the price or value of any of it;

(2) for damages for the seizure, detention, sale of, or injury to, any goods, wares, merchandise, or other personal property seized;

(3) for damages done to any person or property in making a seizure;

(4) for money paid or seized under protest and which, it is claimed, ought to be refunded.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-302. Within one year.

An action may be brought within one year:

(1) for liability created by the statutes of a foreign state;

(2) upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(3) upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;

(4) for libel, slander, false imprisonment, or seduction;

(5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned upon either civil or criminal process;

(6) against a municipal corporation for damages or injuries to property caused by a mob or riot;

(7) except as otherwise expressly provided by statute, against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive, respectively; or

(8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious Land Use Act.

Amended by Chapter 89, 2010 General Session

78B-2-303. One year -- Actions on claims against county, city, or town.

Actions on claims against a county, city, or incorporated town, which have been rejected by the county executive, city commissioners, city council, or board of trustees shall be brought within one year after the first rejection.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-304. Within two years.

An action may be brought within two years:

(1) against a marshal, sheriff, constable, or other officer for liability incurred during the performance of the officer's official duties or by the omission of an official duty, including the nonpayment of money collected upon an execution;

(2) for recovery of damages for a death caused by the wrongful act or neglect of another;

(3) in causes of action against the state and its employees, for injury to the personal rights of another if not otherwise provided by state or federal law; or

(4) in causes of action against a political subdivision of the state and its employees, for injury to the personal rights of another arising after May 1, 2000, if not otherwise provided by state or federal law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-305. Within three years.

An action may be brought within three years:

(1) for waste, trespass upon, or injury to real property; except that when waste or trespass is committed by means of underground works upon any mining claim, the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the waste or trespass;

(2) for taking, detaining, or injuring personal property, including actions for specific recovery; except that in cases where the subject of the action is a domestic animal usually included in the term "livestock," which at the time of its loss has a recorded mark or brand, if the animal strayed or was stolen from the true owner without the owner's fault, the cause does not accrue until the owner has actual knowledge of facts that would put a reasonable person upon inquiry as to the possession of the animal by the defendant;

(3) for relief on the ground of fraud or mistake; except that the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake;

(4) for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special cases a different limitation is prescribed by the statutes of this state; or

(5) to enforce liability imposed by Section 78B-3-603, or for damages under Section 78B-6-1701, except that the cause of action does not accrue until the aggrieved party knows or reasonably should know of the harm suffered.

Amended by Chapter 143, 2010 General Session

78B-2-306. Action against corporate stockholders or directors.

Actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created shall be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability accrued. Actions against stockholders of a bank pursuant to levy of assessment to collect their statutory liability must be brought within three years after the levy of the assessment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-307. Within four years.

An action may be brought within four years:

(1) after the last charge is made or the last payment is received:

(a) upon a contract, obligation, or liability not founded upon an instrument in writing;

(b) on an open store account for any goods, wares, or merchandise; or

(c) on an open account for work, labor or services rendered, or materials furnished;

(2) for a claim for relief or a cause of action under the following sections of Title

25, Chapter 6, Uniform Fraudulent Transfer Act:

(a) Subsection 25-6-5(1)(a), which in specific situations limits the time for action to one year, under Section 25-6-10;

(b) Subsection 25-6-5(1)(b); or

(c) Subsection 25-6-6(1); and

(3) for relief not otherwise provided for by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-308. Civil actions for sexual abuse of a child.

(1) As used in this section:

(a) "Child" means a person under 18 years of age.

(b) "Discovery" means when a person knows or reasonably should know that the injury or illness was caused by the intentional or negligent sexual abuse.

(c) "Injury or illness" means either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

(d) "Molestation" means touching the anus, buttocks, or genitalia of any child, the breast of a female child younger than 14 years of age, or otherwise taking indecent liberties with a child, or causing a child to take indecent liberties with the perpetrator or another, with the intent to arouse or gratify the sexual desire of any person.

(e) "Negligently" means a failure to act to prevent the child sexual abuse from further occurring or to report the child sexual abuse to law enforcement when the adult who could act knows or reasonably should know of the child sexual abuse and is the victim's parent, stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister, uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any person cohabiting in the child's home.

(f) "Person" means an individual who was intentionally or negligently sexually abused. It does not include individuals whose claims are derived through another individual who was sexually abused.

(g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or molestation directed towards a child.

(2) A person shall file a civil action for intentional or negligent sexual abuse suffered as a child:

(a) within four years after the person attains the age of 18 years; or

(b) if a person discovers sexual abuse only after attaining the age of 18 years, that person may bring a civil action for such sexual abuse within four years after discovery of the sexual abuse, whichever period expires later.

(3) The victim need not establish which act in a series of continuing sexual abuse incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse.

(4) The knowledge of a custodial parent or guardian may not be imputed to a person under the age of 18 years.

(5) A civil action may be brought only against a living person who intentionally perpetrated the sexual abuse or negligently permitted the sexual abuse to occur.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-309. Within six years -- Mesne profits of real property -- Instrument in writing.

An action may be brought within six years:

(1) for the mesne profits of real property;

(2) upon any contract, obligation, or liability founded upon an instrument in writing, except those mentioned in Section 78B-2-311; and

(3) to recover fire suppression costs or other damages caused by wildland fire.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-310. Actions against public officers -- Within six years.

An action by the state, any agency, or public corporation against any public officer for malfeasance, misfeasance, or nonfeasance in office or against any surety upon his official bond may be brought within six years after the officer ceases to hold his office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-311. Eight years.

An action may be brought within eight years upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-312. Action on mutual account -- When considered accrued.

In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be considered to have accrued from the time of the last item proved in the account on either side.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-313. Action to recover deficiency after short sale.

(1) As used in this section:

(a) "Deficiency" means the balance owed to a secured lender under a secured loan after completion of a short sale of the secured property.

(b) "Obligor" means the person or persons obligated to pay a secured loan.

(c) "Secured lender" means the person or persons to whom the obligation under a secured loan is owed.

(d) "Secured loan" means a loan or other credit for personal, family, or household purposes secured by a mortgage or trust deed on secured property.

(e) "Secured property" means single-family, residential real property located in the state that is the subject of a mortgage or trust deed to secure a secured loan.

(f) "Short sale" means a sale:
(i) of secured property;
(ii) by the owner of the secured property;
(iii) that results in the secured lender being paid less than the balance owing under the secured loan; and
(iv) made with the secured lender's consent and resulting in the secured lender releasing the mortgage or reconveying the trust deed on the secured property.
(2) An action to recover a deficiency is barred unless it is commenced no more than three months after the date of recording of a release of mortgage or reconveyance of trust deed with respect to secured property and resulting from a short sale of that property.
(3) Subsection (2) does not apply if the obligor or owner engaged in fraud in connection with the short sale.
(4) Subsection (2) does not apply to an agreement that:
(a) is executed:
(i) between one or more obligors under a secured loan and the secured lender; and
(ii) in connection with a short sale; and
(b) obligates an obligor to pay some or all of a deficiency.

Amended by Chapter 278, 2013 General Session

78B-2-314. Statute of limitations -- Permanent or continuing trespass -- Damages.

In accordance with Section 78B-2-305, an action for damage created by trespass shall be brought within three years of discovery of the last trespass incident which includes a permanent or continuing trespass that caused the damage.

Enacted by Chapter 401, 2013 General Session

78B-3-101. Husband and wife -- Actions -- Defense -- Absent spouse.

(1) If a husband and wife are sued jointly, either or both may defend in each one's own right or for both parties.
(2) Either party to a marriage may sue and be sued in the same manner as if the person is unmarried.
(3) When a spouse has deserted the family, the remaining spouse may prosecute or defend in the absent spouse's name any action which the absent spouse might have prosecuted or defended. All powers and rights the absent spouse might have shall be extended to the remaining spouse.

Enacted by Chapter 3, 2008 General Session

78B-3-102. Injury of a child -- Suit by parent or guardian.

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent or guardian may bring an action for the injury of a minor child when the injury is caused by the wrongful act or neglect of another.

(2) A civil action may be maintained against the person causing the injury or, if the person is employed by another person who is responsible for that person's conduct, also against the employer.

(3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in an action for the injury of a child, a guardian ad litem may be appointed for the injured child according to the procedures outlined in Sections 78A-2-703 and 78A-2-705.

Amended by Chapter 267, 2014 General Session

78B-3-103. Successive actions on same contract.

Successive actions may be maintained upon the same contract or transaction if, after a former action, a new cause of action arises from it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-104. Actions against officers -- Bond required -- Costs and attorney fees.

(1) A person may not file an action against a law enforcement officer acting within the scope of the officer's official duties unless the person has posted a bond in an amount determined by the court.

(2) The bond shall cover all estimated costs and attorney fees the officer may be expected to incur in defending the action, in the event the officer prevails.

(3) The prevailing party shall recover from the losing party all costs and attorney fees allowed by the court.

(4) In the event the plaintiff prevails, the official bond of the officer shall be liable for the plaintiff's costs and attorney fees.

Enacted by Chapter 3, 2008 General Session

78B-3-105. Definition of heir.

As used in Sections 78B-3-106 and 78B-3-107, "heirs" means:

(1) the following surviving persons:

(a) the decedent's spouse;

(b) the decedent's children as provided in Section 75-2-114;

(c) the decedent's natural parents, or if the decedent was adopted, then his adoptive parents;

(d) the decedent's stepchildren who:

(i) are in their minority at the time of decedent's death; and

(ii) are primarily financially dependent on the decedent.

(2) "Heirs" means any blood relative as provided by the law of intestate succession if the decedent is not survived by a person under Subsections (1)(a), (b), or (c).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-106. Death of a person -- Suit by heir or personal representative.

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, when the death of a person is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if the person is employed by another person who is responsible for his conduct, then against the other person.

(2) If the adult person has a guardian at the time of his death, only one action may be maintained for the person's injury or death.

(3) The action may be brought by either the personal representatives of the adult deceased person, for the benefit of the person's heirs, or by the guardian for the benefit of the heirs, as defined in Section 78B-3-105.

(4) In every action under this section and Section 78B-3-105 damages may be given as under all the circumstances of the case may be just.

Amended by Chapter 79, 2009 General Session
Amended by Chapter 146, 2009 General Session

78B-3-106.5. Claims brought by presumptive personal representative.

(1) "Presumptive personal representative" means:

(a) the spouse of the decedent not alleged to have contributed to the death of the decedent;

(b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of the decedent is alleged to have contributed to the death of the decedent, then an adult child of the decedent not alleged to have contributed to the death of the decedent; or

(c) if the spouse and all children of the decedent are incapacitated, or are alleged to have contributed to the death of the decedent, then a parent of the decedent.

(2) (a) Forty-five days after the death of a person, including a minor, caused by the wrongful act or neglect of another, the presumptive personal representative may present to an insurer and resolve with the insurer a claim for policy limits up to $25,000 for liability and uninsured motorist claims, $10,000 for underinsured motorist claims, and execute any applicable release of liability upon presentation of an affidavit, properly notarized, stating that:

(i) the person presenting the affidavit is the presumptive personal representative;

(ii) 45 days have elapsed since the death of the decedent;

(iii) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(iv) notice of intent to resolve the claim has been sent to the last-known addresses of all heirs as defined by Section 78B-3-102 or 78B-3-105.

(b) Claims for personal injury protection benefits resulting from the death of an insured are exempt from the 45-day waiting requirement, but shall include all information required in Subsections (2)(a)(i), (iii), and (iv).

(3) The presumptive personal representative's claim shall be on behalf of all heirs of the decedent as defined by Section 78B-3-102 or 78B-3-105. The personal representative shall have the same duties toward other heirs as those duties provided

in Sections 75-3-701 through 75-3-720.

(4) Any insurer and its insured paying a claim arising out of the wrongful death of a person, including a minor, including but not limited to claims for uninsured or underinsured motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative upon presentation of an affidavit as described in Subsection (2) are discharged and released to the same extent as if the insurer and its insured dealt with a personal representative of the decedent. The insurer and its insured are not required to inquire into the truth of any statement in the affidavit.

(5) Nothing in this section affects or prevents, to the limits of insurance protection only, any claim for first party benefits or a proceeding to establish the liability of a tort feasor insured under any policy of insurance in addition to the policy under which the claim was presented and paid under Subsection (2).

(6) If any heirs are minors, the presumptive personal representative may not distribute more than 50% of the proceeds of the settlement until the distribution has been approved by a court approved settlement in which a conservator is appointed for any minor heirs.

Amended by Chapter 50, 2011 General Session

78B-3-107. Survival of action for injury or death to person, upon death of wrongdoer or injured person -- Exception and restriction to out-of-pocket expenses.

(1) (a) A cause of action arising out of personal injury to a person, or death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death of the wrongdoer or the injured person. The injured person, or the personal representatives or heirs of the person who died, has a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages, subject to Subsection (1)(b).

(b) If, prior to judgment or settlement, the injured person dies as a result of a cause other than the injury received as a result of the wrongful act or negligence of the wrongdoer, the personal representatives or heirs of the person have a cause of action against the wrongdoer or personal representatives of the wrongdoer for special and general damages which resulted from the injury caused by the wrongdoer and which occurred prior to death of the injured party from the unrelated cause. General damages may not exceed $100,000.

(c) If the death of the injured party from an unrelated cause occurs more than six months after the incident giving rise to the claim for damages, the claim shall be limited to special damages unless, prior to the injured party's death:

(i) written notice of intent to hold the wrongdoer responsible has been mailed to or served upon the wrongdoer or the wrongdoer's insurance carrier or the uninsured motorist carrier of the injured party, and proof of mailing or service can be produced upon request; or

(ii) a claim for damages against the wrongdoer or against the uninsured motorist carrier of the injured party is the subject of ongoing negotiations between the parties or persons representing the parties or their insurers.

(d) A subsequent claim against an underinsured motorist carrier for which the

injured party was a covered person is not subject to the notice requirement described in Subsection (1)(c).

(e) In no event shall the general damage award exceed $100,000 regardless of available liability, uninsured or underinsured motor vehicle coverage.

(2) Under Subsection (1) neither the injured person nor the personal representatives or heirs of the person who dies may recover judgment except upon competent satisfactory evidence other than the testimony of the injured person.

(3) This section may not be construed to be retroactive.

Amended by Chapter 220, 2014 General Session

78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.

(1) As used in this section:

(a) "Merchandise" has the same meaning as provided in Section 76-6-601.

(b) "Merchant" has the same meaning as provided in Section 76-6-601.

(c) "Minor" has the same meaning as provided in Section 76-6-601.

(d) "Premises" has the same meaning as "retail mercantile establishment" found in Section 76-6-601.

(2) A merchant may request an individual on the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose. The merchant may not be criminally or civilly liable for having made the request.

(3) A merchant who has reason to believe that an individual has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into custody and detain the individual in a reasonable manner and for a reasonable length of time. Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.

(4) (a) A merchant may prohibit an individual who has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii) from reentering the premises on which the individual has committed the offense.

(b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)(a). The notice may be served by:

(i) delivering a copy to the individual personally;

(ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;

(iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the

individual's residence or place of business if the individual is absent from the residence or usual place of business; or

(iv) affixing a copy in a conspicuous place at the individual's residence or place of business.

(c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.

(5) An adult who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is also liable in a civil action for:

(a) actual damages;

(b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed $1,000; and

(c) an additional penalty as determined by the court of not less than $100 nor more than $500, plus court costs and reasonable attorney fees.

(6) A minor who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:

(a) actual damages;

(b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed $500 plus an additional penalty as determined by the court of not less than $50 nor more than $500; and

(c) court costs and reasonable attorney fees.

(7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.

(8) A conviction in a criminal action for any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is not a condition precedent to a civil action authorized under Subsection (5) or (6).

(9) (a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall give written notice to the individual or individuals from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

(b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection (5) or (6).

(10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under Subsection (5) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

Amended by Chapter 257, 2012 General Session

78B-3-109. Right to life -- State policy -- Act or omission preventing abortion not actionable -- Failure or refusal to prevent birth not a defense.

(1) The Legislature finds and declares that it is the public policy of this state to encourage all persons to respect the right to life of all other persons, regardless of age, development, condition, or dependency, including all persons with a disability and all unborn persons.

(2) A cause of action may not arise, and damages may not be awarded, on behalf of any person, based on the claim that but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted.

(3) The failure or refusal of any person to prevent the live birth of a person may not be a defense in any action, and may not be considered in awarding damages or child support, or imposing a penalty, in any action.

Enacted by Chapter 3, 2008 General Session

78B-3-110. Defense to civil action for damages resulting from commission of crime.

(1) A person may not recover from the victim of a crime for personal injury or property damage if:

(a) the person entered the property of the victim or the victim's family with criminal intent and the injury or damage was inflicted by the victim or occurred while the person was on the victim's property; or

(b) the person committed a crime against the victim or the victim's family, during which the damage or injury occurred.

(2) The provisions of Subsection (1) do not apply if the person can prove by clear and convincing evidence that the person's actions did not constitute a crime.

(3) Subsection (1) applies to any next-of-kin, heirs, or personal representatives of the person if the person acquires a disability or is killed.

(4) Subsections (1) and (2) do not apply if the person committing or attempting to commit the crime has clearly retreated from the criminal activity.

(5) "Clearly retreated" means that the person committing the criminal act has fully, clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or activity.

Amended by Chapter 36, 2012 General Session

78B-3-201. Title -- Purpose.

(1) This part is known as the "Nonresident Jurisdiction Act."

(2) It is declared, as a matter of legislative policy, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who, through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

(3) The provisions of this part, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-202. Definitions.

As used in this part:

(1) The words "any person" mean any individual, firm, company, association, or corporation.

(2) The words "transaction of business within this state" mean activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-204. Effect of failure to appoint registered agent -- Service of process upon nonresident.

If a nonresident person doing business fails to appoint a registered agent within the state in accordance with Title 16, Chapter 17, Model Registered Agents Act, service of process may be made by serving any person employed by or acting as an agent for the nonresident.

Amended by Chapter 43, 2010 General Session

78B-3-205. Acts submitting person to jurisdiction.

Notwithstanding Section 16-10a-1501, any person or personal representative of the person, whether or not a citizen or resident of this state, who, in person or through an agent, does any of the following enumerated acts is subject to the jurisdiction of the courts of this state as to any claim arising out of or related to:

(1) the transaction of any business within this state;

(2) contracting to supply services or goods in this state;

(3) the causing of any injury within this state whether tortious or by breach of warranty;

(4) the ownership, use, or possession of any real estate situated in this state;

(5) contracting to insure any person, property, or risk located within this state at the time of contracting;

(6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or

(7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78B, Chapter 15, Utah Uniform Parentage Act, to determine paternity for the purpose of establishing responsibility for child support.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-206. Service of process.

(1) Service of process on any party outside the state may be made pursuant to the applicable provisions of Rule 4 of the Utah Rules of Civil Procedure.

(2) Service of summons and of a copy of the complaint, if any, may also be made upon any person located without this state by any individual over 21 years of age, not a party to the action, with the same force and effect as though the summons had been personally served within this state. No order of court is required. An affidavit of the server shall be filed with the court stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether proper service has been made.

(3) Nothing contained in this section shall be construed to limit or affect the right to serve process in any other manner provided by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-207. Only claims arising from enumerated acts may be asserted.

Only claims arising from acts enumerated in this part may be asserted against a defendant in an action in which jurisdiction over him is based upon this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-208. Default judgments.

(1) A default judgement may not be entered until the expiration of at least 30 days after service.

(2) A default judgment entered on service may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered on personal service within this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-209. When exercisable.

Subject to the applicable statute of limitations, jurisdiction established under this part may be exercised regardless of when the claim arose.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-301. Actions involving real property.

(1) Actions for the following causes involving real property shall be tried in the county in which the subject of the action, or some part, is situated:

(a) for the recovery of real property, or of an estate or interest in the property;

(b) for the determination, in any form, of the right or interest in the property;

(c) for injuries to real property;

(d) for the partition of real property; and

(e) for the foreclosure of all liens and mortgages on real property.

(2) If the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county selected is the proper county for the trial of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-302. Actions to recover fines or penalties -- Against public officers.

(1) Actions to recover fines or penalties shall be tried in the county where the cause, or some part of the cause, arose.

(2) If a fine, penalty, or forfeiture imposed by statute is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on the lake, river, or stream opposite to the place where the offense was committed.

(3) Except as otherwise provided by law, an action against a public officer or the public officer's designee shall be tried in the county where the cause arose.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-303. Actions against a county.

(1) An action against a county may be commenced and tried in the county.

(2) If the action is brought by another county, the action may be commenced and tried in any county not a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-304. Actions on written contracts.

An action on a contract signed in this state to perform an obligation may be commenced and tried in the following venues:

(1) If the action is to enforce an interest in real property securing a consumer's obligation, the action may be brought only in the county where the real property is located or where the defendant resides.

(2) An action to enforce an interest other than under Subsection (1) may be brought in the county where the obligation is to be performed, the contract was signed, or in which the defendant resides.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-305. Transitory actions -- Residence of corporations.

(1) All transitory causes of action arising outside the state, except those mentioned in Section 78B-3-306, shall, if action is brought in this state, be brought and tried in the county where any defendant resides.

(2) If any such defendant is a corporation, the action may be brought and tried in any county in which the corporation has an office or place of business.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-306. Arising without this state in favor of resident.

All transitory causes of action arising outside the state in favor of residents of this state shall be brought and tried in the county where the plaintiff resides, or in the county where the principal defendant resides. If the principal defendant is a corporation, the action shall be brought in the county where the plaintiff resides or in the county where the corporation has an office or place of business.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-307. All other actions.

(1) In all other cases an action shall be tried in the county in which:

(a) the cause of action arises; or

(b) any defendant resides at the commencement of the action.

(2) If the defendant is a corporation, any county in which the corporation has its principal office or a place of business shall be considered the county in which the corporation resides.

(3) If none of the defendants resides in this state, the action may be commenced and tried in any county designated by the plaintiff in the complaint.

(4) If the defendant is about to depart from the state, the action may be tried in any county where any of the parties resides or service is had.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-308. Change of venue -- Conditions precedent.

If the county in which the action is commenced is not the proper county for the trial, the action may nevertheless be tried in the county in which it is filed, unless the defendant, at the time the answer is filed or an appearance is made, files a written motion requesting the trial be moved to the proper county.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-309. Grounds.

The court may, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change;

(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-310. Court to which transfer is to be made.

An action or proceeding which is transferred by order of the court shall be transferred to a court agreed upon by the parties. If the parties do not agree, the action

shall be transferred to the nearest court where the objection or reason for transfer does not exist.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-311. Duty of clerk -- Fees and costs -- Effect on jurisdiction.

(1) When an order is made transferring an action or proceeding for trial, the court shall transmit all pleadings and papers regarding the transferred action to the court to which it is transferred.

(2) All costs and fees for the transfer and filing the papers anew shall be paid by the party at whose instance the order was made.

(3) Notwithstanding Subsection (2), if the order is made because the action was commenced in the wrong county, the costs of transfer and filing the papers anew shall be paid by the plaintiff in the action within 10 days after the issuance of the order, or the action shall be dismissed for lack of jurisdiction.

(4) The court to which an action or proceeding is transferred shall have and exercise the same jurisdiction as if the action had been originally commenced there.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-401. Title.

This part shall be known and may be cited as the "Utah Health Care Malpractice Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-402. Legislative findings and declarations -- Purpose of act.

(1) The Legislature finds and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from health care has increased greatly in recent years. Because of these increases the insurance industry has substantially increased the cost of medical malpractice insurance. The effect of increased insurance premiums and increased claims is increased health care cost, both through the health care providers passing the cost of premiums to the patient and through the provider's practicing defensive medicine because he views a patient as a potential adversary in a lawsuit. Further, certain health care providers are discouraged from continuing to provide services because of the high cost and possible unavailability of malpractice insurance.

(2) In view of these recent trends and with the intention of alleviating the adverse effects which these trends are producing in the public's health care system, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide health-related malpractice insurance while at the same time establishing a mechanism to ensure the availability of insurance in the event that it becomes unavailable from private companies.

(3) In enacting this act, it is the purpose of the Legislature to provide a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability insurance

premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-403. Definitions.

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, registered nurse, licensed practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of

their employment.

(13) "Hospital" means a public or private institution licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(14) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

(15) "Licensed Direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section 58-77-102.

(16) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

(17) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(18) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

(19) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section 58-71-102.

(20) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

(21) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(22) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(23) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(24) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(25) "Pharmacist" means a person licensed to practice pharmacy as provided in Section 58-17b-301.

(26) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.

(27) "Physical therapist assistant" means a person licensed to practice physical therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.

(28) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(29) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

(30) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(31) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.

(32) "Registered nurse" means a person licensed to practice professional

nursing as provided in Section 58-31b-301.

(33) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.

(34) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.

(35) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

(36) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(37) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

(38) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

Amended by Chapter 104, 2013 General Session

78B-3-404. Statute of limitations -- Exceptions -- Application.

(1) A malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed four years after the date of the alleged act, omission, neglect, or occurrence.

(2) Notwithstanding Subsection (1):

(a) in an action where the allegation against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the existence of the foreign object wrongfully left in the patient's body, whichever first occurs; or

(b) in an action where it is alleged that a patient has been prevented from discovering misconduct on the part of a health care provider because that health care provider has affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence, should have discovered the fraudulent concealment, whichever first occurs.

Amended by Chapter 384, 2012 General Session

78B-3-405. Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts

paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).

(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(4) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:

(a) the name and address of the provider of collateral sources;

(b) the amount of collateral sources paid;

(c) the names and addresses of all persons who received payment; and

(d) the items and purposes for which payment has been made.

(5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26, Chapter 19, Medical Benefits Recovery

Act, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-406. Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.

(1) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

(f) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

(g) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or his representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration

that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or his representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) This act may not be construed to prevent any person 18 years of age or over from refusing to consent to health care for his own person upon personal or religious grounds.

(6) Except as provided in Section 76-7-304.5, the following persons are authorized and empowered to consent to any health care not prohibited by law:

(a) any parent, whether an adult or a minor, for the parent's minor child;

(b) any married person, for a spouse;

(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under that person's care and any guardian for the guardian's ward;

(d) any person 18 years of age or over for that person's parent who is unable by reason of age, physical or mental condition, to provide such consent;

(e) any patient 18 years of age or over;

(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;

(g) in the absence of a parent, any adult for the adult's minor brother or sister; and

(h) in the absence of a parent, any grandparent for the grandparent's minor grandchild.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-407. Limitation on actions against health care providers when parent or guardian refuses to consent to health care of child.

(1) A malpractice action against a health care provider may not be brought on the basis of the consequences resulting from the refusal of a child's parent or guardian to consent to the child's health care, if:

(a) the health care is recommended by the health care provider;

(b) the parent or guardian is provided with sufficient information to make an informed decision regarding the recommendation of the health care provider; and

(c) the consent of the parent or guardian is required by law before the health care may be administered.

(2) The sole purpose of this section is to prohibit a malpractice action against a health care provider under the circumstances set forth by this section. This section may

not be construed to:

(a) create a new cause of action;

(b) expand an existing cause of action;

(c) impose a new duty on a health care provider; or

(d) expand an existing duty of a health care provider.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-408. Writing required as basis for liability for breach of guarantee, warranty, contract, or assurance of result.

Liability may not be imposed upon any health care provider on the basis of an alleged breach of guarantee, warranty, contract, or assurance of result to be obtained from any health care rendered unless the guarantee, warranty, contract, or assurance is set forth in writing and signed by the health care provider or an authorized agent of the provider.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-409. Ad damnum clause prohibited in complaint.

A dollar amount may not be specified in the prayer of a complaint filed in a malpractice action against a health care provider. The complaint shall merely pray for such damages as are reasonable in the circumstances.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-410. Limitation of award of noneconomic damages in malpractice actions.

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. The amount of damages awarded for noneconomic loss may not exceed:

(a) for a cause of action arising before July 1, 2001, $250,000;

(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000;

(c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and

(d) for a cause of action arising on or after May 15, 2010, $450,000.

(2) (a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

(b) By July 15 of each year until July 1, 2009, the state treasurer shall:

(i) certify the inflation-adjusted limit calculated under this Subsection (2); and

(ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:

(i) be rounded to the nearest $10,000; and

(ii) apply to a cause of action arising on or after the date the annual adjustment

is made.

(3) As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The limit under Subsection (1) does not apply to awards of punitive damages.

Amended by Chapter 97, 2010 General Session

78B-3-411. Limitation on attorney's contingency fee in malpractice action.

(1) In any malpractice action against a health care provider as defined in Section 78B-3-403, an attorney may not collect a contingent fee for representing a client seeking damages in connection with or arising out of personal injury or wrongful death caused by the negligence of another which exceeds 33-1/3% of the amount recovered.

(2) This limitation applies regardless of whether the recovery is by settlement, arbitration, judgment, or whether appeal is involved.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-412. Notice of intent to commence action.

(1) A malpractice action against a health care provider may not be initiated unless and until the plaintiff:

(a) gives the prospective defendant or his executor or successor, at least 90 days' prior notice of intent to commence an action; and

(b) except for an action against a dentist, the plaintiff receives a certificate of compliance from the division in accordance with Section 78B-3-418.

(2) The notice shall include:

(a) a general statement of the nature of the claim;

(b) the persons involved;

(c) the date, time, and place of the occurrence;

(d) the circumstances surrounding the claim;

(e) specific allegations of misconduct on the part of the prospective defendant; and

(f) the nature of the alleged injuries and other damages sustained.

(3) Notice may be in letter or affidavit form executed by the plaintiff or his attorney. Service shall be accomplished by persons authorized and in the manner prescribed by the Utah Rules of Civil Procedure for the service of the summons and complaint in a civil action or by certified mail, return receipt requested, in which case notice shall be considered served on the date of mailing.

(4) Notice shall be served within the time allowed for commencing a malpractice action against a health care provider. If the notice is served less than 90 days prior to the expiration of the applicable time period, the time for commencing the malpractice action against the health care provider shall be extended to 120 days from the date of service of notice.

(5) This section shall, for purposes of determining its retroactivity, not be construed as relating to the limitation on the time for commencing any action, and shall

apply only to causes of action arising on or after April 1, 1976. This section shall not apply to third party actions, counterclaims or crossclaims against a health care provider.

Amended by Chapter 97, 2010 General Session

78B-3-413. Professional liability insurance coverage for providers -- Insurance commissioner may require joint underwriting authority.

(1) The commissioner may, after a public hearing, find that professional liability insurance coverage for health care providers is not readily available in the voluntary market in a specific part of this state, and that the public interest requires that action be taken.

(2) The commissioner may promulgate rules and implement plans to provide insurance coverage through all insurers issuing professional liability policies and individual and group accident and sickness policies providing medical, surgical or hospital expense coverage on either a prepaid or an expense incurred basis, including personal injury protection and medical expense coverage issued incidental to liability insurance policies.

Amended by Chapter 146, 2009 General Session

78B-3-414. Periodic payment of future damages in malpractice actions.

(1) In any malpractice action against a health care provider, as defined in Section 78B-3-403, the court shall, at the request of any party, order that future damages which equal or exceed $100,000, less amounts payable for attorney fees and other costs which are due at the time of judgment, shall be paid by periodic payments rather than by a lump sum payment.

(2) In rendering a judgment which orders the payment of future damages by periodic payments, the court shall order periodic payments to provide a fair correlation between the sustaining of losses and the payment of damages.

(a) Lost future earnings shall be paid over the judgment creditor's work life expectancy.

(b) The court shall also order, when appropriate, that periodic payments increase at a fixed rate, equal to the rate of inflation which the finder of fact used to determine the amount of future damages, or as measured by the most recent Consumer Price Index applicable to Utah for all goods and services.

(c) The present cash value of all periodic payments shall equal the fact finder's award of future damages, less any amount paid for attorney fees and costs.

(d) The present cash value of periodic payments shall be determined by discounting the total amount of periodic payments projected over the judgment creditor's life expectancy, by the rate of interest which the finder of fact used to reduce the amount of future damages to present value, or the rate of interest available at the time of trial on one year U.S. Government Treasury Bills.

(3) Before periodic payments of future damages may be ordered, the court shall require a judgment debtor to post security which assures full payment of those damages. Security for payment of a judgment of periodic payments may be in one or more of the following forms:

(a) a bond executed by a qualified insurer;
(b) an annuity contract executed by a qualified insurer;
(c) evidence of applicable and collectable liability insurance with one or more qualified insurers;
(d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or
(e) any other form of security approved by the court.
(4) Security which complies with this section may also serve as a supersedeas bond, where one is required.
(5) A judgment which orders payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Those payments may only be modified in the event of the death of the judgment creditor.
(6) If the court finds that the judgment debtor, or the assignee of his obligation to make periodic payments, has failed to make periodic payments as ordered by the court, it shall, in addition to the required periodic payments, order the judgment debtor or his assignee to pay the judgment creditor all damages caused by the failure to make payments, including court costs and attorney fees.
(7) The obligation to make periodic payments for all future damages, other than damages for loss of future earnings, shall cease upon the death of the judgment creditor. Damages awarded for loss of future earnings may not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In that case the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.
(8) If security is posted in accordance with Subsection (3), and approved by a final judgment entered under this section, the judgment is considered to be satisfied, and the judgment debtor on whose behalf the security is posted shall be discharged.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-415. Actions under Utah Governmental Immunity Act.

The provisions of this part shall apply to malpractice actions against health care providers which are brought under the Utah Governmental Immunity Act if applicable. This part may not affect the requirements for filing notices of claims, times for commencing actions and limitations on amounts recoverable under the Utah Governmental Immunity Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-416. Division to provide panel -- Exemption -- Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license fees.

(1) (a) The division shall provide a hearing panel in alleged medical liability

cases against health care providers as defined in Section 78B-3-403, except dentists.

(b) (i) The division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care.

(ii) The division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections 78B-3-416 through 78B-3-420.

(c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing litigation.

(d) Proceedings conducted under authority of this section are confidential, privileged, and immune from civil process.

(2) (a) The party initiating a medical liability action shall file a request for prelitigation panel review with the division within 60 days after the service of a statutory notice of intent to commence action under Section 78B-3-412.

(b) The request shall include a copy of the notice of intent to commence action. The request shall be mailed to all health care providers named in the notice and request.

(3) (a) The filing of a request for prelitigation panel review under this section tolls the applicable statute of limitations until the later of:

(i) 60 days following the division's issuance of:

(A) an opinion by the prelitigation panel; or

(B) a certificate of compliance under Section 78B-3-418; or

(ii) the expiration of the time for holding a hearing under Subsection (3)(b)(ii).

(b) The division shall:

(i) send any opinion issued by the panel to all parties by regular mail; and

(ii) complete a prelitigation hearing under this section within:

(A) 180 days after the filing of the request for prelitigation panel review; or

(B) any longer period as agreed upon in writing by all parties to the review.

(c) If the prelitigation hearing has not been completed within the time limits established in Subsection (3)(b)(ii), the claimant shall:

(i) file an affidavit of merit under the provisions of Section 78B-3-423; or

(ii) file an affidavit with the division within 180 days of the request for pre-litigation review, in accordance with Subsection (3)(d), alleging that the respondent has failed to reasonably cooperate in scheduling the hearing.

(d) If the claimant files an affidavit under Subsection (3)(c)(ii):

(i) within 15 days of the filing of the affidavit under Subsection (3)(c)(ii), the division shall determine whether either the respondent or the claimant failed to reasonably cooperate in the scheduling of a pre-litigation hearing; and

(ii) (A) if the determination is that the respondent failed to reasonably cooperate in the scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division shall, issue a certificate of compliance for the claimant in accordance with Section 78B-3-418; or

(B) if the division makes a determination other than the determination in Subsection (3)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section 78B-3-423, within 30 days of the determination of the division under this

Subsection (3).

(e) (i) The claimant and any respondent may agree by written stipulation that no useful purpose would be served by convening a prelitigation panel under this section.

(ii) When the stipulation is filed with the division, the division shall within 10 days after receipt issue a certificate of compliance under Section 78B-3-418, as it concerns the stipulating respondent, and stating that the claimant has complied with all conditions precedent to the commencement of litigation regarding the claim.

(4) The division shall provide for and appoint an appropriate panel or panels to hear complaints of medical liability and damages, made by or on behalf of any patient who is an alleged victim of medical liability. The panels are composed of:

(a) one member who is a resident lawyer currently licensed and in good standing to practice law in this state and who shall serve as chairman of the panel, who is appointed by the division from among qualified individuals who have registered with the division indicating a willingness to serve as panel members, and a willingness to comply with the rules of professional conduct governing lawyers in the state, and who has completed division training regarding conduct of panel hearings;

(b) (i) one member who is a licensed health care provider listed under Section 78B-3-403, who is practicing and knowledgeable in the same specialty as the proposed defendant, and who is appointed by the division in accordance with Subsection (5); or

(ii) in claims against only hospitals or their employees, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, and who is appointed by the division; and

(c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care provider, and who is a responsible citizen of the state, selected and appointed by the division from among individuals who have completed division training with respect to panel hearings.

(5) (a) Each person listed as a health care provider in Section 78B-3-403 and practicing under a license issued by the state, is obligated as a condition of holding that license to participate as a member of a medical liability prelitigation panel at reasonable times, places, and intervals, upon issuance, with advance notice given in a reasonable time frame, by the division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

(b) A licensee may be excused from appearance and participation as a panel member upon the division finding participation by the licensee will create an unreasonable burden or hardship upon the licensee.

(c) A licensee whom the division finds failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000.

(d) A licensee whom the division finds intentionally or repeatedly failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000, and is guilty of unprofessional conduct.

(e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the Physicians Education Fund created in Section 58-67a-1.

(6) Each person selected as a panel member shall certify, under oath, that he has no bias or conflict of interest with respect to any matter under consideration.

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

(a) Section 63A-3-106;

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

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

(8) (a) In addition to the actual cost of administering the licensure of health care providers, the division may set license fees of health care providers within the limits established by law equal to their proportionate costs of administering prelitigation panels.

(b) The claimant bears none of the costs of administering the prelitigation panel except under Section 78B-3-420.

Amended by Chapter 97, 2010 General Session
Amended by Chapter 286, 2010 General Session

78B-3-417. Proceedings -- Authority of panel -- Rights of parties to proceedings.

(1) No record of the proceedings is required and all evidence, documents, and exhibits are returned to the parties or witnesses who provided the evidence, documents, and exhibits at the end of the proceedings upon the request of the parties or witnesses who provided the evidence.

(2) The division may issue subpoenas for medical records directly related to the claim of medical liability in accordance with division rule and in compliance with the following:

(a) the subpoena shall be prepared by the requesting party in proper form for issuance by the division; and

(b) the subpoena shall be accompanied by:

(i) an affidavit prepared by the person requesting the subpoena attesting to the fact the medical record subject to subpoena is believed to be directly related to the medical liability claim to which the subpoena is related; or

(ii) by a written release for the medical records to be provided to the person requesting the subpoena, signed by the individual who is the subject of the medical record or by that individual's guardian or conservator.

(3) Per diem reimbursement to panel members and expenses incurred by the panel in the conduct of prelitigation panel hearings shall be paid by the division. Expenses related to subpoenas are paid by the requesting party, including witness fees and mileage.

(4) The proceedings are informal and formal rules of evidence are not applicable. There is no discovery or perpetuation of testimony in the proceedings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(5) (a) A party is entitled to attend, personally or with counsel, and participate in

the proceedings, except upon special order of the panel and unanimous agreement of the parties. The proceedings are confidential and closed to the public.

(b) No party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects.

(c) Communications between the panel and the parties, except the testimony of the parties on the merits of the dispute, are disclosed to all other parties.

(6) The division shall appoint a panel to consider the claim and set the matter for panel review as soon as practicable after receipt of a request.

(7) Parties may be represented by counsel in proceedings before a panel.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-418. Decision and recommendations of panel -- No judicial or other review.

(1) (a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this section.

(b) A certificate of compliance issued in accordance with this section is proof that the claimant has complied with all conditions precedent under this part prior to the commencement of litigation as required in Subsection 78B-3-412(1).

(c) (i) Notwithstanding any other provision of this part, any party in a medical malpractice action or arbitration hearing may request a prelitigation panel review as to a health care provider and obtain a certificate of compliance for that specific, individual health care provider for the purpose of allocating fault to that health care provider. A party in a medical malpractice action or arbitration hearing may not attempt to allocate fault to any health care provider unless a certificate of compliance has been issued in accordance with this section for that specific, individual health care provider. A health care provider exempted from the requirement of a prelitigation hearing by statute or an arbitration agreement, may nevertheless be joined in a prelitigation hearing to satisfy the requirements of this section. Participation in a prelitigation hearing may not waive any right to enforce an arbitration agreement.

(ii) The party making the claim against, or seeking to allocate fault to, a health care provider is required to seek and obtain the certificate of compliance required by this Subsection (1)(c).

(2) (a) The panel shall render its opinion in writing not later than 30 days after the end of the proceedings, and determine on the basis of the evidence whether:

(i) each claim against each health care provider has merit or has no merit; and

(ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) There is no judicial or other review or appeal of the panel's decision or recommendations.

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the intent to file a claim under this part, if:

(a) for a named respondent, the panel issues an opinion of merit under

Subsections (2)(a)(i) and (ii);

(b) for a named respondent, the claimant files an affidavit of merit in accordance with Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either Subsection (2)(a)(i) or (ii);

(c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and (d); or

(d) the parties submitted a stipulation under Subsection 78B-3-416(3)(e).

Amended by Chapter 275, 2013 General Session

78B-3-419. Evidence of proceedings not admissible in subsequent action -- Panelist may not be compelled to testify -- Immunity of panelist from civil liability -- Information regarding professional conduct.

(1) Evidence of the proceedings conducted by the medical review panel and its results, opinions, findings, and determinations are not admissible as evidence in any civil action or arbitration proceeding subsequently brought by the claimant against any respondent and are not reportable to any health care facility or health care insurance carrier as a part of any credentialing process.

(2) No panelist may be compelled to testify in a civil action subsequently filed with regard to the subject matter of the panel's review. A panelist has immunity from civil liability arising from participation as a panelist and for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this section.

(3) Nothing in this chapter may be interpreted to prohibit the division from considering any information contained in a statutory notice of intent to commence action, request for prelitigation panel review, or written findings of a panel with respect to the division's determining whether a licensee engaged in unprofessional or unlawful conduct.

Amended by Chapter 275, 2013 General Session

78B-3-420. Proceedings considered a binding arbitration hearing upon written agreement of parties -- Compensation to members of panel.

Upon written agreement by all parties, the proceeding may be considered a binding arbitration hearing and proceed under Title 78B, Chapter 11, Utah Uniform Arbitration Act, except for the selection of the panel, which is done as set forth in Subsection 78B-3-416(4). If the proceeding is considered an arbitration proceeding, the parties are equally responsible for compensation to the members of the panel for services rendered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-421. Arbitration agreements.

(1) After May 2, 1999, for a binding arbitration agreement between a patient and a health care provider to be validly executed or, if the requirements of this Subsection (1) have not been previously met on at least one occasion, renewed:

(a) the patient shall be given, in writing, the following information on:
(i) the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury;
(ii) the role of an arbitrator and the manner in which arbitrators are selected under the agreement;
(iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;
(iv) the right of the patient to decline to enter into the agreement and still receive health care if Subsection (3) applies;
(v) the automatic renewal of the agreement each year unless the agreement is canceled in writing before the renewal date;
(vi) the right of the patient to have questions about the arbitration agreement answered;
(vii) the right of the patient to rescind the agreement within 10 days of signing the agreement; and
(viii) the right of the patient to require mediation of the dispute prior to the arbitration of the dispute;
(b) the agreement shall require that:
(i) except as provided in Subsection (1)(b)(ii), a panel of three arbitrators shall be selected as follows:
(A) one arbitrator collectively selected by all persons claiming damages;
(B) one arbitrator selected by the health care provider; and
(C) a third arbitrator:
(I) jointly selected by all persons claiming damages and the health care provider; or
(II) if both parties cannot agree on the selection of the third arbitrator, the other two arbitrators shall appoint the third arbitrator from a list of individuals approved as arbitrators by the state or federal courts of Utah; or
(ii) if both parties agree, a single arbitrator may be selected;
(iii) all parties waive the requirement of Section 78B-3-416 to appear before a hearing panel in a malpractice action against a health care provider;
(iv) the patient be given the right to rescind the agreement within 10 days of signing the agreement;
(v) the term of the agreement be for one year and that the agreement be automatically renewed each year unless the agreement is canceled in writing by the patient or health care provider before the renewal date;
(vi) the patient has the right to retain legal counsel;
(vii) the agreement only apply to:
(A) an error or omission that occurred after the agreement was signed, provided that the agreement may allow a person who would be a proper party in court to participate in an arbitration proceeding;
(B) the claim of:
(I) a person who signed the agreement;
(II) a person on whose behalf the agreement was signed under Subsection (6); and
(III) the unborn child of the person described in this Subsection (1)(b)(vii)(B), for

12 months from the date the agreement is signed; and

(C) the claim of a person who is not a party to the contract if the sole basis for the claim is an injury sustained by a person described in Subsection (1)(b)(vii)(B); and

(c) the patient shall be verbally encouraged to:

(i) read the written information required by Subsection (1)(a) and the arbitration agreement; and

(ii) ask any questions.

(2) When a medical malpractice action is arbitrated, the action shall:

(a) be subject to Chapter 11, Utah Uniform Arbitration Act; and

(b) include any one or more of the following when requested by the patient before an arbitration hearing is commenced:

(i) mandatory mediation;

(ii) retention of the jointly selected arbitrator for both the liability and damages stages of an arbitration proceeding if the arbitration is bifurcated; and

(iii) the filing of the panel's award of damages as a judgement against the provider in the appropriate district court.

(3) Notwithstanding Subsection (1), a patient may not be denied health care on the sole basis that the patient or a person described in Subsection (6) refused to enter into a binding arbitration agreement with a health care provider.

(4) A written acknowledgment of having received a written explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim that the patient did not receive a written explanation of the agreement as required by Subsection (1) unless the patient:

(a) proves that the person who signed the agreement lacked the capacity to do so; or

(b) shows by clear and convincing evidence that the execution of the agreement was induced by the health care provider's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) The requirements of Subsection (1) do not apply to a claim governed by a binding arbitration agreement that was executed or renewed before May 3, 1999.

(6) A legal guardian or a person described in Subsection 78B-3-406(6), except a person temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement on behalf of a patient.

(7) This section does not apply to any arbitration agreement that is subject to the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

Amended by Chapter 189, 2014 General Session

78B-3-422. Evidence of disclosures -- Civil proceedings -- Unanticipated outcomes -- Medical care.

(1) As used in this section:

(a) "Defendant" means the defendant in a malpractice action against a health care provider.

(b) "Health care provider" includes an agent of a health care provider.

(c) "Patient" includes any person associated with the patient.

(2) In any civil action or arbitration proceeding relating to an unanticipated

outcome of medical care, any unsworn statement, affirmation, gesture, or conduct made to the patient by the defendant shall be inadmissible as evidence of an admission against interest or of liability if it:

(a) expresses:

(i) apology, sympathy, commiseration, condolence, or compassion; or

(ii) a general sense of benevolence; or

(b) describes:

(i) the sequence of events relating to the unanticipated outcome of medical care;

(ii) the significance of events; or

(iii) both.

(3) Except as provided in Subsection (2), this section does not alter any other law or rule that applies to the admissibility of evidence in a medical malpractice action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-423. Affidavit of merit.

(1) (a) Before a claimant may receive a certificate of compliance under Sections 78B-3-416 and 78B-3-418, a claimant shall file an affidavit of merit under this section:

(i) within 60 days of the date of the panel's opinion, if the claimant receives a finding from the pre-litigation panel in accordance with Section 78B-3-418 of non-meritorious for either:

(A) the claim of breach of applicable standard of care; or

(B) that the breach of care was the proximate cause of injury;

(ii) within 60 days of the expiration of the time limit in Subsection 78B-3-416(3)(b)(ii), if a pre-litigation hearing is not held within the time limits under Subsection 78B-3-416(3)(b)(ii); or

(iii) within 30 days of the division's determination under Subsection 78B-3-416(3)(d)(ii)(B), if the division makes a determination under Subsection 78B-3-416(3)(d)(ii)(B).

(b) A claimant who is required to file an affidavit of merit under Subsection (1)(a) shall:

(i) file the affidavit of merit with the division; and

(ii) serve each defendant with the affidavit of merit in accordance with Subsection 78B-3-412(3).

(2) The affidavit of merit shall:

(a) be executed by the claimant's attorney or the claimant if the claimant is proceeding pro se, stating that the affiant has consulted with and reviewed the facts of the case with a health care provider who has determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action; and

(b) include an affidavit signed by a health care provider who meets the requirements of Subsection (3), which states that in the health care provider's opinion:

(i) there are reasonable grounds to believe that the applicable standard of care was breached;

(ii) the breach was a proximate cause of the injury claimed in the notice of intent to commence action; and

(iii) the reasons for the health care provider's opinion.

(c) The statement required in Subsection (2)(b)(i) shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).

(3) A health care provider who signs the affidavit of merit under Subsection (2) shall:

(a) if none of the respondents is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state in the same specialty or of the same class of license as the respondents; or

(b) if at least one of the respondents is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state to practice medicine in all its branches.

(4) A claimant's attorney or claimant may obtain up to a 60-day extension to file the affidavit of merit if:

(a) the claimant or the claimant's attorney submits a signed affidavit for extension with notice to the division attesting to the fact that the claimant is unable to submit an affidavit of merit as required by this section because:

(i) a statute of limitations would impair the action; and

(ii) the affidavit of merit could not be obtained before the expiration of the statute of limitations; and

(b) the claimant or claimant's attorney submits the affidavit for extension to each named respondent in accordance with Subsection 78B-3-412(3) no later than 60 days after the date specified in Subsection (1)(a)(i).

(5) (a) A claimant or claimant's attorney who submits allegations in an affidavit of merit that are found to be without reasonable cause and untrue, based on information available to the plaintiff at the time the affidavit was submitted to the division, is liable to the defendant for the payment of reasonable expenses and reasonable attorney fees actually incurred by the defendant or the defendant's insurer.

(b) An affidavit of merit is not admissible, and cannot be used for any purpose, in a subsequent lawsuit based on the claim that is the subject of the affidavit, except for the purpose of establishing the right to recovery under Subsection (5)(c).

(c) A court, or arbitrator under Section 78B-3-421, may award costs and attorney fees under Subsection (5)(a) if the defendant files a motion for costs and attorney fees within 60 days of the judgment or dismissal of the action in favor of the defendant. The person making a motion for attorney fees and costs may depose and examine the health care provider who prepared the affidavit of merit.

(6) If a claimant or the claimant's attorney does not file an affidavit of merit as required by this section, the division may not issue a certificate of compliance for the claimant and the malpractice action shall be dismissed by the court.

(7) This section applies to a cause of action that arises on or after July 1, 2010.

Enacted by Chapter 97, 2010 General Session

78B-3-424. Limitation of liability for ostensible agent.

(1) For purposes of this section:

(a) "Agent" means a person who is an "employee," "worker," or "operative," as defined in Section 34A-2-104, of a health care provider.

(b) "Ostensible agent" means a person:

(i) who is not an agent of the health care provider; and

(ii) who the plaintiff reasonably believes is an agent of the health care provider because the health care provider intentionally, or as a result of a lack of ordinary care, caused the plaintiff to believe that the person was an agent of the health care provider.

(2) A health care provider named as a defendant in a medical malpractice action is not liable for the acts or omissions of an ostensible agent if:

(a) the ostensible agent has privileges with the health care provider, but is not an agent of the healthcare provider;

(b) the health care provider has by policy or practice, ensured that a person providing professional services has insurance of a type and amount required, if any is required, by the rules or regulations as established in:

(i) medical staff by-laws for a health care facility; or

(ii) other health care facility contracts, indemnification agreements, rules or regulations;

(c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or omission of the ostensible agent; and

(d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to commence an action, the healthcare provider, within 60 days of the service of the notice of intent to commence an action, lists each person identified by the plaintiff who the provider claims is not an agent or ostensible agent of the provider.

(3) This section applies to a cause of action that arises on or after July 1, 2010.

Enacted by Chapter 97, 2010 General Session

78B-3-425. Prohibition on cause of action for negligent credentialing.

It is the policy of this state that the question of negligent credentialing, as applied to health care providers in malpractice suits, is not recognized as a cause of action.

Enacted by Chapter 430, 2011 General Session

78B-3-501. Definitions.

As used in this part, "therapist" means:

(1) a psychiatrist licensed to practice medicine under Section 58-67-301, Utah Medical Practice Act or under Section 58-68-301, Utah Osteopathic Medical Practice Act;

(2) a psychologist licensed to practice psychology under Section 58-61-301;

(3) a marriage and family therapist licensed to practice marriage and family therapy under Section 58-60-304;

(4) a social worker licensed to practice social work under Section 58-60-204;

(5) a psychiatric and mental health nurse specialist licensed to practice advanced psychiatric nursing under Title 58, Chapter 31b, Nurse Practice Act; and

(6) a clinical mental health counselor licensed to practice professional counseling under Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act.

Amended by Chapter 179, 2012 General Session

78B-3-502. Limitation of therapist's duty to warn.

(1) A therapist has no duty to warn or take precautions to provide protection from any violent behavior of his client or patient, except when that client or patient communicated to the therapist an actual threat of physical violence against a clearly identified or reasonably identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to communicate the threat to the victim, and notifies a law enforcement officer or agency of the threat.

(2) An action may not be brought against a therapist for breach of trust or privilege, or for disclosure of confidential information, based on a therapist's communication of information to a third party in an effort to discharge his duty in accordance with Subsection (1).

(3) This section does not limit or effect a therapist's duty to report child abuse or neglect in accordance with Section 62A-4a-403.

Amended by Chapter 146, 2009 General Session

78B-3-601. Purpose.

(1) The purpose of this part is to facilitate the compensation of injured parties from financial protection funds established pursuant to the Price Anderson Act, 42 U.S.C. Sec. 2210.

(2) Nothing in this part may be construed to impose liability for harm from nuclear incidents for which financial protection is not afforded under the Price Anderson Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-602. Definitions.

As used in this part:

(1) "Harm" means:

(a) personal injury, death, or illness, except an injury, death, or illness that is a basis for a claim under either a state or federal workmen's compensation act by an employee of a person liable pursuant to Section 78B-3-603;

(b) damage to, destruction of, or loss of the use of property other than property at the situs of and used in connection with the activity giving rise to a nuclear incident;

(c) economic loss due to:

(i) damage to or loss of the use of property; or

(ii) environmental degradation; or

(d) expenses reasonably incurred by the state, its political subdivisions, or the agencies of either in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident, including, but not limited

to, precautionary evacuations, emergency response measures, and, after reasonable opportunity for performance of cleanup measures by persons liable pursuant to Section 78B-3-603, decontamination or other clean-up measures. These expenses must be documented by the state, its political subdivisions, or agencies of either.

(2) "Nuclear incident" means an incident which does not arise from an act of war and involves the release of nuclear material which results in personal injury, loss of use of property, or damage due to the radioactive, toxic, explosive, or other hazardous properties of the nuclear material.

(3) "Nuclear material" means radioactive material used or handled in connection with:

(a) a utilization facility or production facility licensed by the United States Nuclear Regulatory Commission in accordance with 42 U.S.C. Secs. 2133 or 2134;

(b) a utilization or production facility constructed or operated under a contract for the benefit of the United States where there is a risk of a substantial nuclear incident as determined by the United States Department of Energy or the Nuclear Regulatory Commission; or

(c) disposal, storage, and other activities undertaken pursuant to the Nuclear Waste Policy Act, 42 U.S.C. Secs. 10101 through 10225.

(4) "Radioactive material" means:

(a) source material as defined in 42 U.S.C. Sec. 2014 (z);

(b) special nuclear material as defined in 42 U.S.C. Sec. 2014 (aa); or

(c) by-product material as defined in 42 U.S.C. Sec. 2014 (e).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-603. 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 part 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 part 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 Title 63G, Chapter 7, 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) A person may not collect punitive or exemplary damages under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-604. Determination of causation -- Compensation allowed.

(1) Causation of radiological injury from a nuclear incident shall be determined by the trier of fact, taking into account epidemiological studies, statistical probabilities, and other pertinent medical and scientific evidence.

(2) A claimant under this part shall be entitled to full compensation of the claimant's radiological injuries if the trier of fact determines that it is more likely than not that the claimant's injuries resulted from the nuclear incident.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-701. Definitions.

As used in this part:

(1) "Disability" has the same meaning as defined in Section 62A-5b-102.

(2) "Search and rescue dog" means a dog:

(a) with documented training to locate persons who are:

(i) lost, missing, or injured; or

(ii) trapped under debris as the result of a natural or man-made event; and

(b) affiliated with an established search and rescue dog organization.

(3) "Service animal" means:

(a) a service animal, as defined in Section 62A-5b-102; or

(b) a search and rescue dog.

Amended by Chapter 110, 2009 General Session

78B-3-702. Damages recoverable for harm to or theft of service animal.

(1) A person with a disability who uses a service animal, or the owner of a service animal has a cause of action for economic and noneconomic damages against:

(a) any person who steals or, without provocation, attacks the service animal; and

(b) the owner or keeper of any animal that without provocation attacks a service animal due to the owner's or keeper's negligent failure to exercise sufficient control over the animal to prevent the attack.

(2) The action authorized by this section maybe brought by a person with a

disability who uses the service animal, or the owner of the service animal.

(3) The measure of economic damages in an action brought under Subsection (1) regarding a service animal that is not returned or is killed or injured due to an unprovoked attack so that the service animal is unable to function again as a service animal includes:

(a) the replacement value of an equally trained service animal, without any differentiation for the age or experience of the animal; and

(b) costs and expenses incurred by the person with a disability or the owner, including:

(i) costs of temporary replacement assistance services, whether provided by another service animal or by a person;

(ii) reasonable costs incurred in efforts to recover a stolen service animal; and

(iii) court and attorney costs incurred in bringing an action under this section.

(4) If the unprovoked attack on a service animal results in injuries from which the animal recovers so it is able to again function as a service animal for the person with a disability, or if the theft of the service animal results in the recovery of the service animal and the animal is again able to function as a service animal for the person with a disability, the measure of economic damages is the costs and expenses incurred by the person with a disability or the owner as a result of the theft of or injury to the service animal, and includes:

(a) veterinary medical expenses;

(b) costs of temporary replacement assistance services, whether provided by another service animal or a person;

(c) costs incurred in recovering the service animal, such as a reward; and

(d) court and attorney costs incurred in bringing an action under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-703. Limitation on cause of action.

A cause of action does not exist under this section if the person with a disability who uses the service animal or the person having custody or supervision of the service animal was committing a civil or criminal trespass at the time of the:

(1) theft of, or the chasing or harassment of the service animal by a person who owns or exercises control over the property upon which the trespass is committed; or

(2) attack upon, or the chasing or harassment of a service animal by an animal that is currently kept or maintained on the property where the trespass is committed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-801. Cause of action for death or addiction caused by use or ingestion of illegal controlled substances -- Damages.

(1) As used in this section, "substance" means any illegal controlled substance under Title 58, Chapter 37, Utah Controlled Substance Act.

(2) A person is subject to a civil action by a person or an estate under Subsection (3) who:

(a) unlawfully provided to or administered to the deceased person or the

addicted person any substance that caused or contributed to the person's addiction or to the death of the deceased person; or

(b) unlawfully provided any substance to any person in the chain of transfer of the substance that connects directly to the person who subsequently provided or administered the illegal controlled substance to the addicted person or to the deceased person under Subsection (2)(a).

(3) (a) A civil action for treble damages and punitive damages may be brought against any person under Subsection (2) by the estate of a person whose death was caused in whole or in part by ingestion or other exposure to any illegal controlled substance.

(b) A civil action for treble damages, punitive damages, and costs of addiction treatment or rehabilitation may be brought against any person under Subsection (2) by a person who has become or is addicted to any illegal controlled substance and the addiction was caused in whole or in part by ingestion of any illegal controlled substance.

(4) The burden is on the estate or the addicted person to prove the causal connection between the death or addiction, any substances provided or administered to the deceased or addicted person, and the defendant.

(5) This section does not establish liability of or create a cause of action regarding:

(a) a parent or guardian of a person younger than 18 years of age who acts in violation of this section, unless the parent or guardian acts in violation of this section; or

(b) a person who is licensed under Title 58, Chapter17b, Pharmacy Practice Act, and who acts in accordance with the act.

Amended by Chapter 345, 2010 General Session

78B-3-901. Title.

This part is known as the "Expedited Jury Trial Act."

Enacted by Chapter 111, 2011 General Session

78B-3-902. Pilot project -- Rules and procedures.

The Judicial Council shall by rule create and provide procedures for a pilot project for expedited jury trials in civil actions.

(1) The program shall comply with all constitutional and statutory requirements for jury trials.

(2) All parties to an action shall agree to participation in an expedited jury trial.

(3) Any matters not expressly addressed in this part, in the implementing rules of the court, or in an agreement authorized by this part, are governed by applicable statutes and rules governing civil actions.

Enacted by Chapter 111, 2011 General Session

78B-3-903. Agreement.

(1) An agreement to participate in an expedited jury trial under this part may be

entered into only after a dispute has arisen and an action has been filed.

(2) Any party to an action may file a motion with the court for an expedited jury trial.

(3) Notice of the motion shall be served on all other parties.

(4) All parties agreeing to participate in an expedited jury trial and, if represented, their counsel shall sign the agreement filed with the court.

(5) The agreement to participate in the expedited jury trial process is binding upon the parties.

(6) The conditions of the agreement shall include:

(a) waiver of the right to appeal the verdict;

(b) waiver of the right to move for a directed verdict;

(c) waiver of the right to file post trial motions, except as permitted by rule and Section 78B-3-906; and

(d) an agreed-upon range of monetary damages that will be awarded, regardless of the verdict.

(7) The Judicial Council may by rule impose additional reasonable conditions.

(8) If the jury verdict is within the agreed range of monetary damages, the court shall enter the verdict as rendered. If the jury verdict is outside the agreed range of monetary damages the court shall, as appropriate, increase or decrease the damages to the minimum or maximum agreed amount.

Amended by Chapter 167, 2012 General Session

78B-3-904. Juries.

(1) Juries in expedited jury trial cases shall be composed of no less than six jurors with no alternates.

(2) Nothing in this part is intended to preclude a jury from deliberating as long as needed.

Enacted by Chapter 111, 2011 General Session

78B-3-905. Rules of evidence.

(1) The rules of evidence apply in expedited jury trials, unless the parties stipulate otherwise.

(2) Any stipulation by the parties to use relaxed rules of evidence may not be construed to eliminate or affect the right of a witness or party to invoke any applicable privilege or other law protecting confidentiality.

(3) The right to issue subpoenas and notices to appear to secure the attendance of witnesses or the production of documents at trial shall be in accordance with the Utah Rules of Civil Procedure.

Enacted by Chapter 111, 2011 General Session

78B-3-906. Post-trial motions -- Appeals.

(1) A party may move for a new trial or appeal a judgment only on the following grounds:

(a) judicial misconduct that materially affected the substantive rights of a party;
(b) misconduct of the jury;
(c) corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party that prevented a party from having a fair trial; or
(d) to correct errors of law.
(2) Parties may file post-trial motions:
(a) relating to costs and attorney fees;
(b) to correct a clerical error in a judgment; and
(c) to enforce a judgment.

Enacted by Chapter 111, 2011 General Session

78B-3-907. Attorney fees.

Unless the parties otherwise agree in the consent order, all statutes and rules governing costs and attorney fees apply in expedited jury trials.

Enacted by Chapter 111, 2011 General Session

78B-3-908. Judicial Council to make rules.

The Judicial Council shall, on or before July 1, 2012, adopt rules and forms to establish uniform procedures implementing the provisions of this part, including:
(1) additional content of proposed agreements;
(2) pretrial exchanges and submissions;
(3) pretrial conferences;
(4) time limits for jury selection;
(5) time limits for trial, including presentation of evidence and argument;
(6) presentation of evidence and testimony; and
(7) any other procedures necessary to implement this part.

Enacted by Chapter 111, 2011 General Session

78B-3-909. Report to Legislature -- Repeal date.

(1) The Administrative Office of the Courts shall present a report to the Judiciary Interim Committee not later than September 2016 regarding the program. The report shall include:
(a) the number of expedited jury trials held;
(b) the number of appeals from expedited jury trials;
(c) the approximate cost increase or cost savings experienced by using expedited jury trials; and
(d) a recommendation to continue or sunset this part.
(2) This part is repealed January 1, 2017.

Enacted by Chapter 111, 2011 General Session

78B-4-101. Definitions.

As used in this part:

(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 Governmental Immunity Act of Utah in Section 63G-7-604; 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 Governmental Immunity Act of Utah in Section 63G-7-604.

(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 63G-8-102.

(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 63G, Chapter 8, Immunity for Persons Performing Voluntary Services or Title 67, Chapter 20, Volunteer Government Workers Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-102. Liability protection for volunteers -- Exceptions.

(1) Except as provided in Subsection (2), no volunteer providing services for a nonprofit organization incurs any legal liability for any act or omission of the volunteer while providing services for the nonprofit organization and no volunteer incurs any personal financial liability for any tort claim or other action seeking damage for an injury arising from any act or omission of the volunteer while providing services for the nonprofit organization if:

(a) the individual was acting in good faith and reasonably believed he was acting within the scope of his official functions and duties with the nonprofit organization; and

(b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct.

(2) The protection against volunteer liability provided by this section does not apply:

(a) to injuries resulting from a volunteer's operation of a motor vehicle, a vessel,

aircraft or other vehicle for which a pilot or operator's license is required;

(b) when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law; or

(c) where the nonprofit organization for which the volunteer is working fails to provide a financially secure source of recovery for individuals who suffer injuries as a result of actions taken by the volunteer on behalf of the nonprofit organization.

(3) Nothing in this section shall bar an action by a volunteer against an organization, its officers, or other persons who intentionally or knowingly misrepresent that a financially secure source of recovery does or will exist during a period when such a source does not or will not in fact exist.

(4) Nothing in this section shall be construed to place a duty upon a nonprofit organization to provide a financially secure source of recovery.

(5) The granting of immunity from liability to a volunteer under this section does not affect the liability of the nonprofit organization providing the financially secure source of recovery.

Amended by Chapter 218, 2010 General Session

78B-4-103. Liability protection for organizations.

A nonprofit organization is not liable for the acts or omissions of its volunteers in any circumstance where:

(1) the acts of its volunteers are not as described in Subsection 78B-4-102(1) unless the nonprofit organization had, or reasonably should have had, reasonable notice of the volunteer's unfitness to provide services to the nonprofit organization under circumstances that make the nonprofit organization's use of the volunteer reckless or wanton in light of that notice; or

(2) a business employer would not be liable under the laws of this state if the act or omission were the act or omission of one of its employees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-201. Definitions.

As used in this part:

(1) "Equine" means any member of the equidae family.

(2) "Equine activity" means:

(a) equine shows, fairs, competitions, performances, racing, sales, or parades that involve any breeds of equines and any equine disciplines, including dressage, hunter and jumper horse shows, grand prix jumping, multiple-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, hunting, endurance trail riding, and western games;

(b) boarding or training equines;

(c) teaching persons equestrian skills;

(d) riding, inspecting, or evaluating an equine owned by another person regardless of whether the owner receives monetary or other valuable consideration;

(e) riding, inspecting, or evaluating an equine by a prospective purchaser; or

(f) other equine activities of any type including rides, trips, hunts, or informal or

spontaneous activities sponsored by an equine activity sponsor.

(3) "Equine activity sponsor" means an individual, group, governmental entity, club, partnership, or corporation, whether operating for profit or as a nonprofit entity, which sponsors, organizes, or provides facilities for an equine activity, including:

(a) pony clubs, hunt clubs, riding clubs, 4-H programs, therapeutic riding programs, and public and private schools and postsecondary educational institutions that sponsor equine activities; and

(b) operators, instructors, and promoters of equine facilities, stables, clubhouses, ponyride strings, fairs, and arenas.

(4) "Equine professional" means a person compensated for an equine activity by:

(a) instructing a participant;

(b) renting to a participant an equine to ride, drive, or be a passenger upon the equine; or

(c) renting equine equipment or tack to a participant.

(5) "Inherent risk" with regard to equine or livestock activities means those dangers or conditions which are an integral part of equine or livestock activities, which may include:

(a) the propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them;

(b) the unpredictability of the animal's reaction to outside stimulation such as sounds, sudden movement, and unfamiliar objects, persons, or other animals;

(c) collisions with other animals or objects; or

(d) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

(6) "Livestock" means all domesticated animals used in the production of food, fiber, or livestock activities.

(7) "Livestock activity" means:

(a) livestock shows, fairs, competitions, performances, packing events, or parades or rodeos that involve any or all breeds of livestock;

(b) using livestock to pull carts or to carry packs or other items;

(c) using livestock to pull travois-type carriers during rescue or emergency situations;

(d) livestock training or teaching activities or both;

(e) taking livestock on public relations trips or visits to schools or nursing homes;

(f) boarding livestock;

(g) riding, inspecting, or evaluating any livestock belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the livestock or is permitting a prospective purchaser of the livestock to ride, inspect, or evaluate the livestock;

(h) using livestock in wool production;

(i) rides, trips, or other livestock activities of any type however informal or impromptu that are sponsored by a livestock activity sponsor; and

(j) trimming the feet of any livestock.

(8) "Livestock activity sponsor" means an individual, group, governmental entity,

club, partnership, or corporation, whether operating for profit or as a nonprofit entity, which sponsors, organizes, or provides facilities for a livestock activity, including:

(a) livestock clubs, 4-H programs, therapeutic riding programs, and public and private schools and postsecondary educational institutions that sponsor livestock activities; and

(b) operators, instructors, and promoters of livestock facilities, stables, clubhouses, fairs, and arenas.

(9) "Livestock professional" means a person compensated for a livestock activity by:

(a) instructing a participant;

(b) renting to a participant any livestock for the purpose of riding, driving, or being a passenger upon the livestock; or

(c) renting livestock equipment or tack to a participant.

(10) "Participant" means any person, whether amateur or professional, who directly engages in an equine activity or livestock activity, regardless of whether a fee has been paid to participate.

(11) (a) "Person engaged in an equine or livestock activity" means a person who rides, trains, leads, drives, or works with an equine or livestock, respectively.

(b) Subsection (11)(a) does not include a spectator at an equine or livestock activity or a participant at an equine or livestock activity who does not ride, train, lead, or drive an equine or any livestock.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-202. Equine and livestock activity liability limitations.

(1) It shall be presumed that participants in equine or livestock activities are aware of and understand that there are inherent risks associated with these activities.

(2) An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities, unless the sponsor or professional:

(a) (i) provided the equipment or tack;

(ii) the equipment or tack caused the injury; and

(iii) the equipment failure was due to the sponsor's or professional's negligence;

(b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;

(c) owns, leases, rents, or is in legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;

(d) (i) commits an act or omission that constitutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

(ii) that act or omission causes the injury; or

(e) intentionally injures or causes the injury to the participant.

(3) This chapter does not prevent or limit the liability of an equine activity sponsor, an equine professional, a livestock activity sponsor, or a livestock professional who is:

(a) a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act, in an action to recover for damages incurred in the course of providing professional treatment of an equine;
(b) liable under Title 4, Chapter 25, Estrays and Trespassing Animals; or
(c) liable under Title 78B, Chapter 7, Utah Product Liability Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-203. Signs to be posted listing inherent risks and liability limitations.

(1) An equine or livestock activity sponsor shall provide notice to participants of the equine or livestock activity that there are inherent risks of participating and that the sponsor is not liable for certain of those risks.
(2) Notice shall be provided by:
(a) posting a sign in a prominent location within the area being used for the activity; or
(b) providing a document or release for the participant, or the participant's legal guardian if the participant is a minor, to sign.
(3) The notice provided by the sign or document shall be sufficient if it includes the definition of inherent risk in Section 78B-4-201 and states that the sponsor is not liable for those inherent risks.
(4) Notwithstanding Subsection (1), signs are not required to be posted for parades and activities that fall within Subsections 78B-4-201(2)(f) and (7)(c), (e), (g), (h), and (j).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-301. Title.

This part is known as the "Commonsense Consumption Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-302. Definitions.

As used in this part:
(1) "Claim" means any assertion by or on behalf of a natural person, as well as any derivative claim arising from it, and asserted by or on behalf of any other person.
(2) "Food":
(a) means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption;
(b) does not include:
(i) tobacco products;
(ii) alcohol products;
(iii) vitamins or dietary supplements;
(iv) illegal drugs; or
(v) prescription or over-the-counter drugs.

(3) "Knowing and willful violation" means that the conduct constituting the violation was:

(a) committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers; and

(b) not required by regulation, order, rule, ordinance, or any statute administered by a federal, state, or local government agency.

(4) "Condition resulting from long term consumption of food" means the cumulative effect of consumption of food, which includes weight gain, obesity, or other generally known health conditions allegedly caused by or likely to result from the consumption of food.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-303. Prevention of unfounded lawsuits -- Exemption.

(1) Except as provided in Subsection (2), a manufacturer, packer, distributor, carrier, holder, seller, marketer, advertiser of a food, or an association of one or more such entities, may not be subject to civil liability arising under any state statute, rule, public policy, court or administrative decision, municipal ordinance, or other action having the effect of law, for any claim of obesity or weight gain resulting from the consumption of food.

(2) Subsection (1) may not apply where the claim of obesity or weight gain is based on:

(a) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, regulation, or ordinance and the claimed injury was proximately caused by the violation; or

(b) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that the violation is knowing and willful, and the claimed injury was proximately caused by the violation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-304. Pleading requirements.

(1) In any action commenced under the provisions of Subsection 78B-4-303(2), the complaint or petition shall state with particularity the following:

(a) the statute, rule, regulation, ordinance, or other law that was allegedly violated;

(b) the facts that are alleged to constitute a material violation of the statute, rule, regulation, ordinance, or other law; and

(c) the facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff.

(2) The complaint or petition shall also state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that the violation was injurious to consumers.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-305. Stay pending motion to dismiss.

(1) In any action commenced under the provisions of Subsection 78B-4-303(2), all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party.

(2) During the pendency of any stay of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, and tangible objects that are in the custody or control of the party and are relevant to the allegations, as if they were the subject of a continuing request for production from an opposing party under Rule 34, URCP.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-306. Applicability.

The provisions of this chapter apply to all covered claims pending on May 3, 2004, and all claims filed after that date, regardless of when the claim arose.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-401. Public policy.

The Legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protection to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing. It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, to establish as a matter of law that certain risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from those inherent risks.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-402. Definitions.

As used in this part:

(1) "Inherent risks of skiing" means those dangers or conditions which are an integral part of the sport of recreational, competitive, or professional skiing, including, but not limited to:

(a) changing weather conditions;

(b) snow or ice conditions as they exist or may change, such as hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, or machine-made snow;

(c) surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;

(d) variations or steepness in terrain, whether natural or as a result of slope

design, snowmaking or grooming operations, and other terrain modifications such as terrain parks, and terrain features such as jumps, rails, fun boxes, and all other constructed and natural features such as half pipes, quarter pipes, or freestyle-bump terrain;

(e) impact with lift towers and other structures and their components such as signs, posts, fences or enclosures, hydrants, or water pipes;

(f) collisions with other skiers;

(g) participation in, or practicing or training for, competitions or special events; and

(h) the failure of a skier to ski within the skier's own ability.

(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, using skis, sled, tube, snowboard, or any other device.

(4) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle, or other type of ski jumping, and snowboarding.

(5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-403. Bar against claim or recovery from operator for injury from risks inherent in sport.

Notwithstanding anything in Sections 78B-5-817 through 78B-5-823 to the contrary, no skier may make any claim against, or recover from, any ski area operator for injury resulting from any of the inherent risks of skiing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-404. Trail boards listing inherent risks and limitations on liability.

Ski area operators shall post trail boards at one or more prominent locations within each ski area which shall include a list of the inherent risks of skiing, and the limitations on liability of ski area operators, as defined in this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-501. Good Samaritan Act.

(1) A person who renders emergency care at or near the scene of, or during an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. As used in this section, "emergency" means an unexpected occurrence involving injury, threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.

(2) A person who gratuitously, and in good faith, assists governmental agencies or political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable for any civil damages or penalties as a result of any act or omission unless the person rendering assistance is grossly negligent in:

(a) implementing measures to 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) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) responding 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.

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-502. Donation of food -- Liability limits.

(1) A person or entity who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability regarding the condition of the food unless an injury or death results from an act or omission of the donor that constitutes gross negligence, recklessness, or intentional misconduct.

(2) A nonprofit organization that distributes either directly or indirectly apparently wholesome food to persons in need at no charge and substantially complies with applicable local, county, state, and federal laws and regulations regarding the storage and handling of food for public distribution is not subject to civil or criminal liability regarding the condition of the food unless an injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-503. Immunity for transient shelters.

(1) As used in this section, "transient shelter" means any person which provides shelter, food, clothing, or other products or services without consideration to indigent persons.

(2) Except as provided in Subsection (3), all transient shelters, owners, operators, and employees of transient shelters, and persons who contribute products or services to transient shelters, are immune from suit for damages or injuries arising out of or related to the damaged or injured person's use of the products or services provided by the transient shelter.

(3) This section does not prohibit an action against a person for damages or injury intentionally caused by that person or resulting from his gross negligence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-504. Donation of nonschedule drugs or devices -- Liability limitation.

(1) As used in this section:

(a) "Administer" is as defined in Section 58-17b-102.

(b) "Dispense" is as defined in Section 58-17b-102.

(c) "Distribute" is as defined in Section 58-17b-102.

(d) "Drug outlet" means:

(i) a pharmacy or pharmaceutical facility as defined in Section 58-17b-102; or

(ii) a person with the authority to engage in the dispensing, delivering, manufacturing, or wholesaling of prescription drugs or devices outside of the state under the law of the jurisdiction in which the person operates.

(e) "Health care provider" means:

(i) a person who is a health care provider, as defined in Section 78B-3-403, with the authority under Title 58, Occupations and Professions, to prescribe, dispense, or administer prescription drugs or devices; or

(ii) a person outside of the state with the authority to prescribe, dispense, or administer prescription drugs or devices under the law of the jurisdiction in which the person practices.

(f) "Nonschedule drug or device" means:

(i) a prescription drug or device, as defined in Section 58-17b-102, except that it does not include controlled substances, as defined in Section 58-37-2; or

(ii) a nonprescription drug, as defined in Section 58-17b-102.

(g) "Prescription drug or device" is as defined in Section 58-17b-102.

(2) A drug outlet is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the drug outlet distributes at no charge, in good faith, and for a charitable purpose to a drug outlet or health care provider for ultimate use by a needy person, provided that:

(a) the drug outlet complies with applicable state and federal laws regarding the storage, handling, and distribution of the nonschedule drug or device; and

(b) the injury or death is not the result of any act or omission of the drug outlet that constitutes gross negligence, recklessness, or intentional misconduct.

(3) A health care provider is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the health care provider distributes to a drug outlet or health care provider for ultimate use by a needy person or directly administers, dispenses, or distributes to a needy person, provided that:

(a) the health care provider complies with applicable state and federal laws regarding the storage, handling, distribution, dispensing, and administration of the nonschedule drug or device;

(b) the injury or death is not the result of any act or omission of the health care provider that constitutes gross negligence, recklessness, or intentional misconduct; and

(c) in the event that the health care provider directly administers, distributes, or dispenses the nonschedule drug or device to the needy person, the health care provider has retained a consent form signed by the needy person that explains the

provisions of this section which extend liability protection for charitable donations of nonschedule drugs and devices.

(4) Nothing in this section may be construed as:

(a) permitting a person who is not authorized under Title 58, Occupations and Professions, to operate as a drug outlet or practice as a health care provider within the state; or

(b) extending liability protection to any person who acts outside of the scope of authority granted to that person under the laws of this state or the jurisdiction in which the person operates or practices.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-505. Liability of reprocessor of single-use medical devices.

(1) For purposes of this section:

(a) "Critical single-use medical device" means a medical device that:

(i) is marked as a single-use device by the original manufacturer; and

(ii) is intended to directly contact normally sterile tissue or body spaces during use, or is physically connected to a device intended to contact normally sterile tissue or body spaces during use.

(b) "Original manufacturer" means any person or entity who designs, manufactures, fabricates, assembles, or processes a critical single-use medical device which is new and has not been used in a previous medical procedure.

(c) "Reprocessor" includes a person or entity who performs the functions of contract sterilization, installation, relabeling, remanufacturing, repacking, or specification development of a reprocessed critical single-use medical device.

(d) "Reconditioned or reprocessed critical single-use medical device" means a critical single use medical device that:

(i) has previously been used on a patient and has been subject to additional processing and manufacturing for the purpose of additional use on a different patient;

(ii) includes a device that meets the definition under Subsection (1)(a), but has been labeled by the reprocessor as "recycled," "refurbished," or "reused"; and

(iii) does not include a disposable or critical single-use medical device that has been opened but not used on an individual.

(2) A reprocessor who reconditions or reprocesses a critical single-use medical device assumes the liability:

(a) of the original manufacturer of the critical single-use medical device; and

(b) for the safety and effectiveness of the reconditioned or reprocessed critical single-use medical device.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-506. Limited immunity for architects and engineers inspecting earthquake damage.

(1) A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a, Architects Licensing Act, who provides structural inspection services at the

scene of a declared national, state, or local emergency caused by a major earthquake is not liable for any personal injury, wrongful death, or property damage caused by the good faith inspection for structural integrity or nonstructural elements affecting health and safety of a structure used for human habitation or owned by a public entity if the inspection is performed:

(a) voluntarily, without compensation or the expectation of compensation;

(b) at the request of a public official or city or county building inspector acting in an official capacity; and

(c) within 30 days of the earthquake.

(2) The immunity provided for in Subsection (1) does not apply to gross negligence or willful misconduct.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-507. Amusement park rides -- Park responsibilities -- Rider responsibilities.

(1) As used in this section:

(a) (i) "Amusement park" means any permanent indoor or outdoor facility or park where amusement rides are available for use by the general public.

(ii) "Amusement park" does not include a ski resort, a traveling show, carnival, or fair.

(b) "Amusement ride" means a device or attraction at an amusement park which carries or conveys passengers along, around, or over a fixed or restricted route or course or allows the passenger to steer or guide it within an established area for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" includes:

(i) any water-based recreational attraction, including all water slides, wave pools, and water parks; and

(ii) typical rides, including roller coasters, whips, ferris wheels, and merry-go-rounds.

(c) "Intoxicated" means a person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs other persons.

(d) "Operator" means any person, firm, or corporation that owns, leases, manages, or operates an amusement park or amusement ride and all employees and agents of the amusement park.

(e) "Rider" means any person who is:

(i) waiting in the immediate vicinity of an amusement ride in order to get on the ride;

(ii) in the process of leaving the ride but remains in its immediate vicinity; or

(iii) a passenger or participant on an amusement ride.

(2) An amusement park shall inform riders in writing, where appropriate, of the nature of the ride, including factors which would assist riders in determining whether they should participate in the ride activity and the rules concerning conduct on each ride. Information concerning the rules of conduct may be given verbally at the

beginning of each ride segment or posted in writing conspicuously at the entrance to each ride.

(3) Riders are responsible for obeying the posted rules and verbal instructions of the amusement ride operator.

(4) A rider may not:

(a) board or dismount from an amusement ride except at a designated area;

(b) board an amusement ride if he has a physical condition that may be aggravated by participation on the ride;

(c) disconnect, disable, or attempt to disconnect or disable, any safety device, seat belt, harness, or other restraining device before, during, or after movement of the amusement ride has started except at the express instruction of the operator;

(d) throw or expel any object from an amusement ride;

(e) act in any manner contrary to posted or oral rules while boarding, riding, or dismounting from an amusement ride; or

(f) engage in any reckless act or activity which may injure himself or others.

(5) A rider may not board or attempt to board any amusement ride if he is intoxicated.

(a) An operator of an amusement park ride may prevent a rider who is perceptibly or apparently intoxicated from boarding an amusement ride.

(b) An operator who prevents a rider from boarding an amusement ride under this section, is not criminally or civilly liable if the operator reasonably believes that the rider is intoxicated.

(6) An amusement park shall post signs and notices in conspicuous locations throughout the park informing riders of the importance of reporting all injuries sustained on amusement park premises. The signs shall contain the location where any injuries may be reported.

(7) A rider, or the parent or guardian of a minor rider on the minor's behalf, may report in writing to the amusement facility or its designated agent any injuries sustained on an amusement ride before leaving the amusement facility premises, unless the rider, or parent or guardian of a minor rider, is unable to file a report because of the severity of the injuries to the rider. The report shall be filed as soon as reasonably possible and include:

(a) the name, address, and phone number of the injured person;

(b) if the injured person is a minor, the name, address, and phone number of the parent or guardian filing the report;

(c) a brief description of the incident causing the injury, including the location, date, and time of the injury;

(d) a description of the injury, including the cause, if known; and

(e) the name, address, and phone number of any known witnesses to the incident.

(8) The actions of any rider of sufficient age and knowledge to assume the inherent risks of an amusement ride who violates the provisions of Subsection (3), (4), or (5) may be considered by the court in a civil action brought by a rider against the amusement park operator for injuries sustained while at the amusement park for the purpose of allocating fault between the parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-508. Limitation on liability of hockey facilities.

(1) As used in this section, "hockey facility" means a facility where hockey is customarily played or practiced and the general public is charged an admission fee to attend.

(2) The owner or operator of a hockey facility is not liable for any injury to the person or property of any person as a result of that person being hit by a hockey puck or stick unless:

(a) the person is situated completely behind a board, glass, or similar barrier and the board, glass, or barrier is defective; or

(b) the injury is caused by negligent or willful and wanton conduct in connection with the game of hockey by the owner or operator or any hockey player, coach, or manager employed by the owner or operator.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-509. Inherent risks of certain recreational activities -- Claim barred against county or municipality -- No effect on duty or liability of person participating in recreational activity or other person.

(1) As used in this section:

(a) "Inherent risks" means those dangers, conditions, and potentials for personal injury or property damage that are an integral and natural part of participating in a recreational activity.

(b) "Municipality" has the meaning as defined in Section 10-1-104.

(c) "Person" includes an individual, regardless of age, maturity, ability, capability, or experience, and a corporation, partnership, limited liability company, or any other form of business enterprise.

(d) "Recreational activity" includes a rodeo, an equestrian activity, skateboarding, skydiving, para gliding, hang gliding, roller skating, ice skating, fishing, hiking, walking, running, jogging, bike riding, or in-line skating on property:

(i) owned, leased, or rented by, or otherwise made available to:

(A) with respect to a claim against a county, the county; and

(B) with respect to a claim against a municipality, the municipality; and

(ii) intended for the specific use in question.

(2) Notwithstanding anything in Sections 78B-5-817 through 78B-5-823 to the contrary, no person may make a claim against or recover from any of the following entities for personal injury or property damage resulting from any of the inherent risks of participating in a recreational activity:

(a) a county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act; or

(b) the owner of property that is leased, rented, or otherwise made available to a county, municipality, local district, or special service district for the purpose of providing or operating a recreational activity.

(3) (a) Nothing in this section may be construed to relieve a person participating

in a recreational activity from an obligation that the person would have in the absence of this section to exercise due care or from the legal consequences of a failure to exercise due care.

(b) Nothing in this section may be construed to relieve any other person from an obligation that the person would have in the absence of this section to exercise due care or from the legal consequences of a failure to exercise due care.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 360, 2008 General Session

78B-4-510. Affirmative defense for liquified petroleum gas industry.

(1) In any action for damages for personal injury, death, or property damage in which a seller, supplier, installer, handler, or transporter of liquified petroleum gas is named as a defendant, it shall be an affirmative defense to liability that:

(a) the equipment or appliance which caused the damage was altered or modified without the consent or knowledge of the seller, supplier, installer, handler, or transporter; or

(b) the equipment or appliance was used in a manner or for a purpose other than that for which it was intended.

(2) There is a rebuttable presumption that a seller, supplier, installer, handler, or transporter of liquified petroleum gas and the necessary equipment and appliances, licensed in accordance with Title 53, Chapter 7, Part 3, Liquified Petroleum Gas Act, has followed all applicable standards and procedures established by the Liquified Petroleum Gas Board.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-511. Regulation of firearms reserved to state -- Lawsuits prohibited.

(1) As prescribed by Section 76-10-500, all authority to regulate firearms is reserved to the state through the Legislature.

(2) A person who lawfully designs, manufactures, markets, advertises, transports, or sells firearms or ammunition to the public may not be sued by the state or any of its political subdivisions for the subsequent use, whether lawfully or unlawfully, of the firearm or ammunition, unless the suit is based on the breach of a contract or warranty for a firearm or ammunition purchased by the state or political subdivision.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-512. Affirmative defense for agri-tourism industry.

(1) As used in this section, "agri-tourism" means an activity that allows members of the general public to view or enjoy agricultural related activities, including farming, ranching, or historic, cultural, or natural attractions, for recreational, entertainment, or educational purposes.

(a) An activity may be an agri-tourism activity whether or not the participant pays to participate in the activity.

(b) An activity is not an agri-tourism activity if the participant is paid to participate

in the activity.

(2) In any action for damages for personal injury, death, or property damage in which an owner or operator of an agri-tourism activity is named as a defendant, it shall be an affirmative defense to liability that:

(a) the injured person deliberately disregarded conspicuously posted signs, verbal instructions, or other warnings regarding safety measures during the activity; or

(b) any equipment, animals, or appliance used by the injured person during the activity were used in a manner or for a purpose other than that for which a reasonable person should have known they were intended.

Enacted by Chapter 132, 2008 General Session

78B-4-513. Cause of action for defective construction.

(1) Except as provided in Subsection (2), an action for defective design or construction is limited to breach of the contract, whether written or otherwise, including both express and implied warranties.

(2) An action for defective design or construction may include damage to other property or physical personal injury if the damage or injury is caused by the defective design or construction.

(3) For purposes of Subsection (2), property damage does not include:

(a) the failure of construction to function as designed; or

(b) diminution of the value of the constructed property because of the defective design or construction.

(4) Except as provided in Subsections (2) and (6), an action for defective design or construction may be brought only by a person in privity of contract with the original contractor, architect, engineer, or the real estate developer.

(5) If a person in privity of contract sues for defective design or construction under this section, nothing in this section precludes the person from bringing, in the same suit, another cause of action to which the person is entitled based on an intentional or willful breach of a duty existing in law.

(6) Nothing in this section precludes a person from assigning a right under a contract to another person, including to a subsequent owner or a homeowners association.

Enacted by Chapter 280, 2008 General Session

78B-4-514. Definitions -- Immunity for architects and engineers during emergencies.

(1) As used in this section:

(a) "Architect" means a person licensed in accordance with Title 58, Chapter 3a, Architects Licensing Act.

(b) "Declared state of emergency" means a state of emergency declared by the governor of this state or by the chief executive officer of a political subdivision, in accordance with Title 63K, Chapter 4, Disaster Response and Recovery Act.

(c) "Professional engineer" means a person licensed in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing

Act.

(d) "Public official" means an appointed or elected federal, state, or local official, including building inspectors and police and fire chiefs, acting within the scope and jurisdiction of the official's authority during a declared emergency.

(2) An architect or professional engineer, acting in good faith and within the scope of his or her respective license, is not liable for:

(a) any acts, errors, or omissions; or

(b) personal injury, wrongful death, property damage, or any other loss arising from architectural or engineering services provided by the architect or engineer:

(i) as a non-paid volunteer at the request of a public official; and

(ii) during, or for 90 days following, a declared state of emergency.

(3) Nothing in Subsection (2) shall be construed to provide immunity to an architect or engineer for architectural or engineering services that are not within the scope of licensure.

Amended by Chapter 218, 2010 General Session

78B-4-515. Limitation on liability for greenhouse gases.

(1) "Greenhouse gas" means water vapor, carbon dioxide, methane, nitrous oxide, ozone, and chlorofluorocarbons.

(2) A person residing or doing business in this state may not be held liable for damage or injury to another arising out of any actual or potential effect on climate caused by contributions to emissions of greenhouse gases unless it can be proved by clear and convincing evidence that the person has:

(a) violated an enforceable statutory limitation or restriction against emissions of a specific greenhouse gas originating within this state; or

(b) violated the express terms of a valid, enforceable operating, air, or other permit issued by a state or federal regulatory agency that has jurisdiction over the greenhouse gas emissions of the person or business.

(3) The person bringing the action shall:

(a) specify each greenhouse gas emitted by the defendant which is asserted to give rise to the cause of action; and

(b) show by clear and convincing evidence that unavoidable and identifiable damage or injury has resulted or will result as a direct cause of the defendant's violation of statutory and permitting limits.

Amended by Chapter 340, 2011 General Session

78B-4-601. Title.

This part is known as the "Successor Corporation Asbestos-Related Liability Act."

Enacted by Chapter 237, 2012 General Session

78B-4-602. Definitions.

As used in this part:

(1) "Asbestos claim" means a claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(a) the health effects of exposure to asbestos, including a claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance;

(b) a claim made by or on behalf of a person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and

(c) a claim for damage or loss caused by the installation, presence, or removal of asbestos.

(2) "Corporation" means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than this state.

(3) "Successor" means a corporation that:

(a) (i) assumes or incurs or has assumed or incurred successor asbestos-related liability;

(ii) is the successor corporation after a merger or consolidation; and

(iii) became a successor before January 1, 1972; or

(b) is a successor corporation of a corporation described in Subsection (3)(a).

(4) (a) "Successor asbestos-related liability" means liability:

(i) whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due;

(ii) that is related in any way to an asbestos claim; and

(iii) (A) is assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation; or

(B) that is related in any way to an asbestos claim based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

(b) "Successor asbestos-related liability" includes liability that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 78B-4-605, was or is paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with a settlement, judgment, or other discharge in this state or another jurisdiction.

(5) "Transferor" means a corporation from which successor asbestos-related liability is or was assumed or incurred.

Enacted by Chapter 237, 2012 General Session

78B-4-603. Applicability.

(1) The limitations in Section 78B-4-604 apply to a successor.

(2) The limitations in Section 78B-4-604 do not apply to:

(a) workers' compensation benefits paid by or on behalf of an employer to an employee under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A,

Chapter 3, Utah Occupational Disease Act, or a comparable workers' compensation law of another jurisdiction;

(b) a claim against a corporation that does not constitute a successor asbestos-related liability;

(c) an obligation under the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., as amended, or under a collective bargaining agreement; or

(d) a successor that, after a merger or consolidation, continued in the business of:

(i) mining asbestos;

(ii) selling or distributing asbestos fibers; or

(iii) manufacturing, distributing, removing, or installing asbestos-containing products that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

Enacted by Chapter 237, 2012 General Session

78B-4-604. Measure of liabilities.

(1) Except as further limited in Subsection (2), the cumulative successor asbestos-related liability of a successor is limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. A successor does not have responsibility for successor asbestos-related liability in excess of this limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liability in connection with a prior merger or consolidation with a prior transferor, the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in Subsection (1) for purposes of determining the limitation of liability of a successor.

Enacted by Chapter 237, 2012 General Session

78B-4-605. Establishing fair market value of total gross assets.

(1) A successor may establish the fair market value of total gross assets for the purpose of the limitations under Section 78B-4-604 through any method reasonable under the circumstances, including:

(a) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(b) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) (a) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of the insurance may not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or related agreement including:

(i) preenactment settlements resolving coverage-related disputes; and

(ii) the rights of an insurer to seek payment of applicable deductibles, restrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods when insurance is uncollectible or otherwise unavailable.

(b) Without limiting Subsection (3)(a), to the extent total gross assets include liability insurance, a settlement, or a dispute concerning the liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before May 8, 2012, shall be determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

Enacted by Chapter 237, 2012 General Session

78B-4-606. Adjustment.

(1) Subject to Subsections (2) through (4), the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

(a) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the calendar year may be used; and

(b) 1%.

(2) The rate found in Subsection (1) may not be compounded.

(3) The adjustment of the fair market value of total gross assets shall continue as provided in Subsection (1) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liability paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(4) An adjustment of the fair market value of total gross assets may not be applied to any liability insurance that may be included in the definition of total gross assets by Subsection 78B-4-605(3).

Enacted by Chapter 237, 2012 General Session

78B-4-607. Scope.

(1) Courts of this state shall construe this part liberally with regard to successors.

(2) This part shall apply to an asbestos claim filed against a successor on or after May 8, 2012. This part shall apply to a pending asbestos claim against a successor in which trial has not commenced as of May 8, 2012, except that any provision of this part that would be unconstitutional if applied retroactively shall be applied prospectively.

Enacted by Chapter 237, 2012 General Session

78B-5-101. Right to jury trial.

In actions for the recovery of specific real or personal property, with or without damages, or for money claimed due upon contract or as damages for breach of contract, or for injuries, an issue of fact may be tried by a jury, unless a jury trial is waived or a reference is ordered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-102. Jury to decide questions of fact.

All questions of fact, where the trial is by jury, other than those mentioned in Section 78B-5-103, are to be decided by the jury, and all evidence is to be addressed to them, except when otherwise provided.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-103. Court to decide questions of law.

All questions of law, including the admissibility of evidence, the facts preliminary to admission, the construction of statutes and other writings, the application of the rules of evidence, and all discussions of law are to be addressed to and decided by the court. Whenever the knowledge of the court is by law made evidence of a fact, the court shall explain the knowledge to the jury, who are to accept it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.

(1) For purposes of this part, "Registry of Judgments" means the index where a judgment is filed and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment is filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

(a) the information identifying the judgment debtor as required under Subsection (4)(b) on the judgment or abstract of judgment; or

(b) a copy of the separate information statement of the judgment creditor that

contains:

(i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

(ii) the name and address of the judgment creditor;

(iii) the amount of the judgment as filed in the Registry of Judgments;

(iv) if known, the judgment debtor's Social Security number, date of birth, and driver's license number if a natural person; and

(v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(5) For the information required in Subsection (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgment was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(6) (a) Any judgment that requires payment of money and is entered in a district court on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not include the debtor identifying information as required in Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with Subsections (4) and (5).

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

(i) the name of any judgment creditor, debtor, assignor, or assignee;

(ii) the date on which the judgment was recorded in the office of the county recorder as described in Subsection (4); and

(iii) the county recorder's entry number and book and page of the recorded judgment.

(7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with actual or constructive knowledge of the judgment.

(8) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Lien Act.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Amended by Chapter 114, 2014 General Session
Amended by Chapter 151, 2014 General Session

78B-5-202. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court may not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit with the court where the notice of appeal is filed of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

(i) within four years after the date the youngest child reaches majority; or

(ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78B-5-201(4)(b) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78B-5-201(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Amended by Chapter 151, 2014 General Session

78B-5-203. Judgment against party dying after verdict or decision.

If a party dies after a verdict or decision upon any issue of fact, and before judgment, the judgment is not a lien on the real property of the deceased party, but is payable in the course of the administration of the party's estate.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-204. Judgment against sheriff -- When conclusive against sureties on indemnity bond.

If an action is brought against a sheriff for an act done by virtue of his office and he gives written notice to the sureties on any bond of indemnity received by him, the judgment recovered is conclusive evidence of his right to recover against such sureties. The court may, on motion, and upon five days notice, order judgment to be entered against them for the amount recovered, including costs.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-205. Judgment by confession authorized.

A judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by law. The judgment may be entered in any court having jurisdiction for like amounts.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-206. Mileage allowance for judgment debtor required to appear.

A judgment debtor legally required to appear before a district court or a master to answer concerning the debtor's property is entitled, on a sufficient showing of need, to mileage of 15 cents per mile for each mile actually and necessarily traveled in going only, to be paid by the judgment creditor at whose instance the judgment debtor was required to appear. The judgment creditor is not required to make any payment for such mileage until the judgment debtor has actually appeared before the court or master.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-301. Title.

This part is known as the "Utah Foreign Judgment Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-302. Definition -- Filing and status of foreign judgments.

(1) As used in this part, "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court whose acts are entitled to full faith and credit in this state.

(2) A copy of a foreign judgment authenticated in accordance with an appropriate act of Congress or an appropriate act of Utah may be filed with the clerk of any district court in Utah. The clerk of the district court shall treat the foreign judgment in all respects as a judgment of a district court of Utah.

(3) A foreign judgment filed under this part has the same effect and is subject to the same procedures, defenses, enforcement, satisfaction, and proceedings for reopening, vacating, setting aside, or staying as a judgment of a district court of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-303. Notice of filing.

(1) The judgment creditor or attorney for the creditor, at the time of filing a foreign judgment, shall file an affidavit with the clerk of the district court stating the last known post-office address of the judgment debtor and the judgment creditor.

(2) Upon the filing of a foreign judgment and affidavit, the clerk of the district

court shall notify the judgment debtor that the judgment has been filed. Notice shall be sent to the address stated in the affidavit. The clerk shall record the date the notice is mailed in the register of actions. The notice shall include the name and post-office address of the judgment creditor and the name and address of the judgment creditor's attorney, if any.

(3) No execution or other process for the enforcement of a foreign judgment filed under this part may issue until 30 days after the judgment is filed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-304. Stay.

(1) If an appeal from a foreign judgment is pending, the time for appeal has not expired, or a stay of execution has been granted, the court, upon proof that the judgment debtor has furnished security for satisfaction of the judgment in the state in which the judgment was rendered shall stay enforcement of the judgment until the appeal is concluded, the time for appeal expires, or until the stay of execution expires or is vacated.

(2) If the foreign judgment debtor, upon motion, shows the district court any ground upon which enforcement of a judgment of a district court of this state would be stayed, the court shall stay enforcement of the foreign judgment upon the posting of security in the kind and amount required to stay enforcement of a domestic judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-305. Lien.

(1) A foreign judgment entered in a district court under this part becomes a lien as provided in Section 78B-5-202 if:

(a) a stay of execution has not been granted;

(b) the requirements of this chapter are satisfied; and

(c) the judgment is recorded in the office of the county recorder where the property of the judgment debtor is located, as provided in Section 78B-5-202.

(2) The lien becomes effective at the time and date of recording and expires eight years after date of entry by the court in the foreign jurisdiction unless renewed in Utah as required by Utah law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-306. Optional procedure.

This part may not be construed to impair a judgment creditor's right to bring an action in this state to enforce the creditor's judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-307. Uniformity of interpretation.

This part shall be construed to effectuate the general purpose to make uniform the law of those states which enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-320. Grounds for nonrecognition of libel judgments.

A judgment obtained in a foreign jurisdiction may be considered nonrecognizable and unenforceable by the courts of this state if:

(1) the judgment was obtained in a jurisdiction outside the United States;

(2) the judgment resulted in a libel judgment for damages; and

(3) the court sitting in this state before which the matter is brought determines that the libel law applied in the foreign court's adjudication process did not provide at least as much protection for freedom of speech and press as would be provided by the United States Constitution and the Utah Constitution.

Enacted by Chapter 117, 2010 General Session

78B-5-321. Foreign libel judgment.

For the purposes of applying Title 78B, Chapter 5, Part 3, Utah Foreign Judgment Act, to this part, the courts of this state may not make the determination in Section 78B-5-320 unless the person attempting to enforce the judgment submits to personal jurisdiction and the person against whom the judgment is being enforced:

(1) is a resident of this state;

(2) is a person or entity amenable to the jurisdiction of this state;

(3) has assets in this state; or

(4) may be required to take action in this state to comply with the judgment.

Enacted by Chapter 117, 2010 General Session

78B-5-322. Application.

This part applies to all foreign libel judgments filed for enforcement or recognition in this state.

Enacted by Chapter 117, 2010 General Session

78B-5-401. Title.

This part is known as the "Uniform Foreign-Money Claims Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-402. Definitions.

As used in this part:

(1) "Action" means a judicial proceeding or arbitration in which a money payment may be awarded or enforced in respect of a foreign-money claim.

(2) "Conversion date" means the banking day next before the date on which money is, in accordance with this part:

(a) paid to a judgment creditor;

(b) paid to the designated official enforcing a judgment on behalf of the

judgment creditor; or

(c) used to effect a recoupment or set-off of claims in different money in an action.

(3) "Distribution proceeding" means a judicial or nonjudicial proceeding for an accounting, an assignment for the benefit of creditors, a foreclosure, for the liquidation or rehabilitation of a corporation or other entity, for the distribution of an estate, trust, or other fund in or against which a foreign-money claim is asserted.

(4) "Foreign money" means money other than money of the United States of America.

(5) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(6) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(7) "Money of the claim" means the money determined as proper by Section 78B-5-405.

(8) "Party" means an individual, a corporation, government or governmental subdivision or agency, business trust, partnership or association of two or more persons having a joint or common interest or any other legal or commercial entity asserting or defending against a foreign-money claim.

(9) "Rate of exchange" means the rate at which the money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by the party obliged to pay or to state a rate of conversion. If separate exchange rates apply to different kinds of transactions or events, the term means the rate applicable to the particular transaction or event giving rise to the foreign-money claim.

(10) (a) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for settlement by immediate payment, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(b) "Bank-offered spot rate" means the rate of exchange at which a bank will issue its draft in the foreign money or will cause credit to become available in the foreign money on a next-day basis.

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the United States Virgin Islands.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-403. Scope.

(1) This part applies only to a foreign-money claim in an action or distribution proceeding.

(2) This part applies to foreign-money issues notwithstanding the law applicable under the conflict of laws rules of this state to other issues in the action or distribution proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-404. Variation by agreement.

(1) The effect of provisions of this part may be varied by agreement of the parties made at any time before or after commencement of an action, distribution proceeding, or the entry of judgment.

(2) The parties may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may use different money for different aspects of the transaction. Stating the price in a foreign money or for a particular transaction does not require, of itself, the use of that money for other aspects of the transaction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-405. Determining the money of the claim.

(1) Except as provided by Subsection (2), the proper money of the claim is, as in each case may be appropriate, the money:

(a) regularly used between the parties as a matter of usage or course of dealing;

(b) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) in which the loss was ultimately felt or will be incurred by a party.

(2) The money in which the parties have contracted that a payment be made is the proper money of the claim for that payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-406. Determining the amount of the money of certain contract claims.

(1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the exchange rate prevailing on a date prior to default, that exchange rate applies only for payments made a reasonable time after default, not to exceed 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) (a) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money shall, when received by the creditor, equal a specified amount of the foreign money of the country of the creditor.

(b) If because of unexcused delay in payment of a judgment or award the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator, as the case may be, has jurisdiction to and may amend the judgment or award accordingly.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-407. Asserting and defending a foreign-money claim.

(1) A claimant may assert a claim in a specified foreign money. If a foreign money is not asserted, the claimant makes a claim for a judgment in United States dollars.

(2) An opposing party may allege and prove the claim is in whole or in part for a different money than that asserted by the claimant.

(3) Any party may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-408. Judgments and awards on foreign-money claims -- Time of money conversion -- Form of judgment.

(1) Except as provided in Subsection (3), a judgment or arbitration award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) The judgment or award is payable in that foreign money or at the option of the debtor in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) Judgments or awards made in an action on both:

(a) a defense, set-off, recoupment, or counterclaim; and

(b) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with Subsection (1):

IT IS ADJUDGED AND ORDERED that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 78B-5-410) percent a year or, at the option of the judgment debtor, the number of United States dollars as will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by Subsection 78B-5-406(1) or (2), the judgment or award shall be entered for the amount of the money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars as will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment shall be filed in the judgment docket and indexed in foreign money in the same manner, and shall have the same effect as a lien as other judgments. It may be discharged by payment.

(9) A person shall record a judgment lien, or assignment, release, renewal, or

extension of a judgment lien, in the county recorder's office in accordance with the following provisions, as applicable:

(a) Sections 17-21-10, 78B-5-201, and 78B-5-202; and

(b) Title 38, Chapter 9, Wrongful Lien Act.

Amended by Chapter 114, 2014 General Session

78B-5-409. Conversions of foreign money in a distribution proceeding.

The rate of exchange prevailing at or near the closing of business on the day the proceeding is initiated shall govern all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding must assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-410. Prejudgment and judgment interest.

(1) With respect to a foreign-money claim, recovery of prejudgment interest and the rate of interest to be applied in the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) Notwithstanding Subsection (1), an increase or decrease in the amount of prejudgment interest otherwise payable may be made in a foreign-money judgment to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment on a foreign-money claim bears interest at the same rate applicable to other judgments of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-411. Enforcement of foreign judgments.

(1) Subject to Subsections (2) and (3), if an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment shall be entered as provided in Section 78B-5-408 whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, shall be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(2) Notwithstanding Subsection (1), a foreign judgment may be filed in the judgment docket in accordance with any statute of this state providing a procedure for its recognition and enforcement.

(3) A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in this state in United States dollars only.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-412. Temporarily determining the United States dollar value of foreign-money claims for limited purposes.

(1) For the limited purpose of facilitating the enforcement of provisional remedies in an action:

(a) the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process;

(b) the amount of United States dollars at issue for assessing costs; or

(c) the amount of United States dollars involved for a surety bond or other court-required undertaking shall be ascertained as provided in Subsections (2) and (3).

(2) The party seeking the process, costs, bond, or other undertaking shall compute the dollar amount of the foreign money claimed from a bank-offered spot rate of exchange prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(3) The party seeking the process, costs, bond, or other undertaking shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used, how obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment was in the amount of United States dollars stated in the affidavit or certificate.

(4) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for payment purposes.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-413. Effect of currency revalorizations.

(1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under Subsection (1) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall have jurisdiction to, and shall, amend the judgment or award by a like conversion of the former money.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-414. Supplementary general principles of law.

Unless displaced by particular provisions of this part, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,

bankruptcy, or other validating or invalidating causes supplement its provisions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-415. Uniformity of application and construction.

This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-416. Application.

This part applies to actions and distribution proceedings commenced after April 23, 1990.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-501. Title.

This part is known as the "Utah Exemptions Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-502. Definitions.

As used in this part:

(1) "Debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise.

(2) "Dependent" means the spouse of an individual, and the grandchild or the natural or adoptive child of an individual who derives support primarily from that individual.

(3) "Exempt" means protected, and "exemption" means protection from subjection to a judicial process to collect an unsecured debt.

(4) "Judicial lien" means a lien on property obtained by judgment or other legal process instituted for the purpose of collecting an unsecured debt.

(5) "Levy" means the seizure of property pursuant to any legal process issued for the purpose of collecting an unsecured debt.

(6) "Lien" means a judicial, or statutory lien, in property securing payment of a debt or performance of an obligation.

(7) "Liquid assets" means deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(8) "Security interest" means an interest in property created by contract to secure payment or performance of an obligation.

(9) "Statutory lien" means a lien arising by force of a statute, but does not include a security interest or a judicial lien.

(10) "Value" means fair market value of an individual's interest in property, exclusive of valid liens.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-503. Homestead exemption -- Definitions -- Excepted obligations -- Water rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax purposes.

(1) For purposes of this section:

(a) "Household" means a group of persons related by blood or marriage living together in the same dwelling as an economic unit, sharing furnishings, facilities, accommodations, and expenses.

(b) "Mobile home" is as defined in Section 57-16-3.

(c) "Primary personal residence" means a dwelling or mobile home, and the land surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or mobile home, in which the individual and the individual's household reside.

(d) "Property" means:

(i) a primary personal residence;

(ii) real property; or

(iii) an equitable interest in real property awarded to a person in a divorce decree by a court.

(2) (a) An individual is entitled to a homestead exemption consisting of property in this state in an amount not exceeding:

(i) $5,000 in value if the property consists in whole or in part of property which is not the primary personal residence of the individual; or

(ii) $30,000 in value if the property claimed is the primary personal residence of the individual.

(b) If the property claimed as exempt is jointly owned, each joint owner is entitled to a homestead exemption; however

(i) for property exempt under Subsection (2)(a)(i), the maximum exemption may not exceed $10,000 per household; or

(ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not exceed $60,000 per household.

(c) A person may claim a homestead exemption in either or both of the following:

(i) one or more parcels of real property together with appurtenances and improvements; or

(ii) a mobile home in which the claimant resides.

(d) A person may not claim a homestead exemption for property that the person acquired as a result of criminal activity.

(3) A homestead is exempt from judicial lien and from levy, execution, or forced sale except for:

(a) statutory liens for property taxes and assessments on the property;

(b) security interests in the property and judicial liens for debts created for the purchase price of the property;

(c) judicial liens obtained on debts created by failure to provide support or maintenance for dependent children; and

(d) consensual liens obtained on debts created by mutual contract.

(4) (a) Except as provided in Subsection (4)(b), water rights and interests, either in the form of corporate stock or otherwise, owned by the homestead claimant are exempt from execution to the extent that those rights and interests are necessarily employed in supplying water to the homestead for domestic and irrigating purposes.

(b) Those water rights and interests are not exempt from calls or assessments and sale by the corporations issuing the stock.

(5) (a) When a homestead is conveyed by the owner of the property, the conveyance may not subject the property to any lien to which it would not be subject in the hands of the owner.

(b) The proceeds of any sale, to the amount of the exemption existing at the time of sale, is exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.

(6) The sale and disposition of one homestead does not prevent the selection or purchase of another.

(7) For purposes of any claim or action for taxes brought by the United States Internal Revenue Service, a homestead exemption claimed on real property in this state is considered to be a property right.

Amended by Chapter 192, 2013 General Session

78B-5-504. Declaration of homestead -- Filing -- Contents -- Failure to file -- Conveyance by married person -- No execution sale if bid less than exemption -- Redemption rights of judgment creditor.

An individual may select and claim a homestead by complying with the following requirements:

(1) Filing a signed and acknowledged declaration of homestead with the recorder of the county or counties in which the homestead claimant's property is located or serving a signed and acknowledged declaration of homestead upon the sheriff or other officer conducting an execution prior to the time stated in the notice of execution.

(2) The declaration of homestead shall contain:

(a) a statement that the claimant is entitled to an exemption and if the claimant is married a statement that the claimant's spouse has not filed a declaration of homestead;

(b) a description of the property subject to the homestead;

(c) an estimate of the cash value of the property; and

(d) a statement specifying the amount of the homestead claimed and stating the name, age, and address of any spouse and dependents claimed to determine the value of the homestead.

(3) If a declaration of homestead is not filed or served as provided in this section, title shall pass to the purchaser upon execution free and clear of all homestead rights.

(4) If an individual is married, no conveyance of or security interest in, or contract to convey or create a security interest in property recorded as a homestead prior to the time of the conveyance, security interest, or contract is valid, unless both the husband and wife join in the execution of the conveyance, security interest, or

contract.

(5) Property that includes a homestead may not be sold at execution if there is no bid which exceeds the amount of the declared homestead exemption.

(6) If property that includes a homestead is sold under execution, the sale is subject to redemption by the judgment debtor as provided in Rule 69C of the Utah Rules of Civil Procedure. If there is a deficiency, the property may not be subject to another execution to cover the deficiency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-505. Property exempt from execution.

(1) (a) An individual is entitled to exemption of the following property:

(i) a burial plot for the individual and the individual's family;

(ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;

(iii) benefits the individual or the individual's dependent have received or are entitled to receive from any source because of:

(A) disability;

(B) illness; or

(C) unemployment;

(iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or the individual's dependent to pay for that care;

(v) veterans benefits;

(vi) money or property received, and rights to receive money or property for child support;

(vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;

(viii) (A) one:

(I) clothes washer and dryer;

(II) refrigerator;

(III) freezer;

(IV) stove;

(V) microwave oven; and

(VI) sewing machine;

(B) all carpets in use;

(C) provisions sufficient for 12 months actually provided for individual or family use;

(D) all wearing apparel of every individual and dependent, not including jewelry or furs; and

(E) all beds and bedding for every individual or dependent;

(ix) except for works of art held by the debtor as part of a trade or business, works of art:

(A) depicting the debtor or the debtor and his resident family; or

(B) produced by the debtor or the debtor and his resident family;

(x) proceeds of insurance, a judgment, or a settlement, or other rights accruing

as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;

(xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;

(xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;

(xiii) proceeds and avails of any unmatured life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;

(xiv) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code;

(xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code; and

(xvi) unpaid earnings of the household of the filing individual due as of the date of the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family income for the household size of the filing individual as determined by the Utah State annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid earnings are paid more often than once a month or, if unpaid earnings are not paid more often than once a month, then in the amount of 1/12 of the Utah State annual median family income for the household size of the individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers.

(b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

(i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or

(ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy. This may not include amounts directly rolled over from other funds which are exempt from attachment under this section.

(2) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.

(3) Exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

Amended by Chapter 192, 2013 General Session

78B-5-506. Value of exempt property -- Exemption of implements, professional books, tools, and motor vehicles.

(1) An individual is entitled to exemption of the following property up to an aggregate value of items in each subsection of $1,000:

(a) sofas, chairs, and related furnishings reasonably necessary for one household;

(b) dining and kitchen tables and chairs reasonably necessary for one household;

(c) animals, books, and musical instruments, if reasonably held for the personal use of the individual or the individual's dependents;

(d) heirlooms or other items of particular sentimental value to the individual; and

(e) firearms and ammunition not included in other exemption categories in the amount of $250 per individual, and not more than $500 per household.

(2) An individual is entitled to an exemption, not exceeding $5,000 in aggregate value, of implements, professional books, or tools of the individual's trade, including motor vehicles to which no other exemption has been applied, and that are actually used by the individual in the individual's principal business, trade, or profession.

(3) (a) As used in this Subsection (3), "motor vehicle" does not include any motor vehicle designed for or used primarily for recreational purposes, such as:

(i) an off-highway vehicle as defined in Section 41-22-2, except a motorcycle the individual regularly uses for daily transportation; or

(ii) a recreational vehicle as defined in Section 13-14-102, except a van the individual regularly uses for daily transportation.

(b) An individual is entitled to an exemption, not exceeding $3,000 in value, of one motor vehicle.

(4) This section does not affect property exempt under Section 78B-5-505.

Amended by Chapter 192, 2013 General Session

78B-5-507. Exemption of proceeds from property sold, taken by condemnation, lost, damaged, or destroyed -- Tracing exempt property and proceeds.

(1) (a) An individual who owned property described in this Subsection (1) is entitled to an exemption of proceeds that are traceable for one year after the compensation for the property is received if:

(i) (A) the property, or a part of the property, could have been claimed exempt under Subsection 78B-5-505(1)(a)(i) or (ii); or

(B) the property is personal property subject to a value limitation under Subsection 78B-5-506(1)(a), (b), or (c); and

(ii) the property has been:

(A) sold or taken by condemnation; or

(B) lost, damaged, or destroyed; and

(C) the owner has been compensated for the property.

(b) The exemption of proceeds under this Subsection (1) does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under Section 78B-5-503 or 78B-5-506.

(2) Money or other property exempt under Subsection 78B-5-505(1)(a)(iii), (iv), (v), (vi), (vii), (xiii), or (xiv) remains exempt after its receipt by, and while it is in the possession of, the individual or in any other form into which it is traceable.

(3) Money or other property and proceeds exempt under this chapter are traceable under this section by application of:

(a) the principle of:

(i) first-in first-out; or

(ii) last-in last-out; or

(b) any other reasonable basis for tracing selected by the individual.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-508. Allowable claims against exempt property.

(1) Notwithstanding other provisions of this part, but subject to the provisions of the Utah Uniform Consumer Credit Code:

(a) A creditor may levy against exempt property of any kind, except unemployment benefits, to enforce a claim for:

(i) alimony, support, or maintenance;

(ii) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(iii) state or local taxes.

(b) The only deductions that can be withheld from unemployment benefits are those listed in Section 35A-4-103.

(c) A creditor may levy against exempt property to enforce a claim for:

(i) the purchase price of the property or a loan made for the purpose of enabling an individual to purchase the specific property used for that purpose;

(ii) labor or materials furnished to make, repair, improve, preserve, store, or transport the specific property; and

(iii) a special assessment imposed to defray costs of a public improvement benefiting the property.

(2) This section does not affect the right to enforce any statutory lien or security interest in exempt property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-509. Waiver of exemptions in favor of unsecured creditor unenforceable.

A waiver of exemptions executed in favor of an unsecured creditor before levy on an individual's property is unenforceable.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-510. Assertion of individual's rights by spouse, dependent, or other authorized person.

If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this part, the spouse or a dependent of the individual or any other authorized person may make the claim or objection or assert the rights provided by this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-511. Injunctive relief, damages, or both allowed against creditor to prevent violation of chapter -- Costs and attorney fees.

An individual or the spouse or a dependent of the individual is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this part. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief or damages.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-512. Property held by joint tenants or tenants in common.

If an individual and another own property in this state as joint tenants or tenants in common, a creditor of the individual, subject to the individual's right to claim an exemption under this part, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-513. Exemption provisions applicable in bankruptcy proceedings.

An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in Subsection (d) of Section 522 of the Bankruptcy Reform Act (Public Law 95-598), unless the individual is a nonresident of this state and has been for the 180 days immediately preceding filing for bankruptcy.

Amended by Chapter 192, 2013 General Session

78B-5-601. Statutes as evidence.

(1) The recitals in a public statute are conclusive evidence of the fact recited for the purpose of carrying it into effect.

(2) The recitals in a private statute are conclusive evidence between parties who claim under its provisions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-602. Entries in official records as evidence.

Entries in public or other official books or records, made by a public officer in

the performance of the officer's official duties or by any other person in the performance of a duty specially enjoined by the law, are prima facie evidence of the facts stated in the entry.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-603. Entries in course of official duty as evidence.

An entry made by an officer or board of officers, or under the direction and in the presence of either, in the course of official duty is prima facie evidence of the facts stated in the entry.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-604. Certificate of location or purchase of public lands of United States as evidence.

A certificate of purchase or of location of any lands in this state, issued or made in pursuance of any law of the United States, is prima facie evidence that the holder or assignee of the certificate is the owner of the land described in the certificate. This evidence may be overcome by proof that the land was in the adverse possession of the adverse party, or those under whom the party claims, or that the adverse party was holding the land for mining purposes at the time the certificate is filed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-605. Histories, scientific books, maps, and charts as evidence.

Historical works, books of science or art, and published maps or charts, when made or published by persons having no interest in a proceeding, are prima facie evidence of facts of general notoriety and interest.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-606. Certificate of acknowledgment as evidence of execution.

Private writings, except last wills and testaments, may be acknowledged or proved, and certified in the manner provided for the acknowledgment or proof of conveyances of real property. The certificate of acknowledgment or proof is prima facie evidence of the execution of the writing in the same manner as a conveyance of real property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-607. When entries and writings of a decedent are prima facie evidence.

The entries and other writings of a decedent made at or near the time of the transaction, and when the decedent was in a position to know the facts stated in the entry, may be read as prima facie evidence of the facts written about, in the following

cases:

(1) the entry was made against the interest of the person making it;

(2) it was made in a professional capacity and in the ordinary course of professional conduct; or

(3) it was made in the performance of a duty specially enjoined by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-608. Writings -- How proved.

A writing may be proved either:

(1) by any one who saw the writing executed;

(2) by evidence of the genuineness of the handwriting of the maker; or

(3) by a subscribing witness.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-609. Proof of execution when subscribing witness denies or forgets.

If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-610. When unnecessary.

If the evidence shows that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given if the instrument is one produced from the custody of the adverse party and has been acted upon by the party as genuine.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-611. Proof of wills.

A last will and testament, except a nuncupative will, is invalid, unless it is in writing and executed in accordance with Title 75, Chapter 2, Part 5, Wills. When a will is to be shown, the instrument itself shall be produced, or secondary evidence of its contents given.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-612. Proof of instruments affecting real estate.

An instrument conveying or affecting real property, acknowledged, or proved and certified as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof. The record, or a certified copy of the record, of the conveyance or instrument acknowledged or proved may be read in evidence, with the same effect as the original. The party offering the certified copy shall prove by affidavit or otherwise, that

the original is not in the possession or under the control of the party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-613. Proof of publication of document, notice, or order.

(1) (a) If a court or judge orders a document or notice published in a newspaper, evidence of the publication shall be made by affidavit of the publisher, the publisher's foreman, or principal clerk with a copy of the publication attached.

(b) The affidavit shall state the date and newspaper of publication.

(2) (a) If a court or judge orders a document or notice published electronically in accordance with Section 45-1-101, evidence of the publication shall be made by affidavit of the website publisher or the website publisher's designee with a printed copy of the publication attached.

(b) The affidavit shall state the date of publication.

Amended by Chapter 388, 2009 General Session

78B-5-614. Filing of affidavit -- Original or certified copy as evidence.

If an affidavit is made in an action or special proceeding pending in a court, it may be filed with the court or clerk of the court. If not made in an action or special proceeding pending in a court, it may be filed with the recorder of the county where the newspaper is published. The original affidavit, or a copy certified by the judge of the court or officer having it in custody, is prima facie evidence of the facts stated in the affidavit.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-615. Parol evidence of contents of writings -- When admissible.

(1) The contents of a writing shall be proved by the original writing unless:

(a) the original has been lost or destroyed, in which case proof of the loss or destruction shall be made first;

(b) the original is in the possession of the party against whom the evidence is offered and the party fails to produce it after reasonable notice;

(c) the original is a record or other document in the custody of a public officer;

(d) the original has been recorded, and the record or a certified copy of the record is made in accordance with the law governing the writing offered; or

(e) the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

(2) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so

reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. The reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, an enlargement or facsimile of the reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(3) In the cases mentioned in Subsections (1)(c) and (d), a copy of the original, or of the record, shall be produced. In those mentioned in Subsections (1)(a) and (b), either a copy or oral evidence of the contents shall be given.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-616. Business record -- Admissibility -- Weight.

(1) As used in this section, "business" includes business, profession, occupation, and calling of every kind.

(2) A writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of that act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make the memorandum or record at the time of the act, transaction, occurrence, or event or within a reasonable time after.

(3) All circumstances, other than those set forth in Subsection (2), of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but those circumstances do not affect its admissibility.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-617. Writings bearing obvious alterations -- Explanation required.

(1) The party producing as genuine a writing which has been altered, or appears to have been altered after its execution in a part material to the question in dispute must account for the appearance of alteration.

(2) The party may show that the alteration:

(a) was made by another without the party's concurrence;

(b) was made with the consent of the parties affected by it;

(c) was otherwise properly or innocently made; or

(d) does not change the meaning or language of the instrument.

(3) An altered writing that a party cannot adequately explain under Subsection (2) is not admissible.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) Pursuant to 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider as defined in Section 78B-3-403, when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

(2) When a health care provider as defined in Section 78B-3-403 is not governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

(3) A health care provider who provides a copy of a patient's records to the patient or the patient's personal representative:

(a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and

(b) may charge a reasonable cost-based fee provided that the fee includes only the cost of:

(i) copying, including the cost of supplies for and labor of copying; and

(ii) postage, when the patient or patient representative has requested the copy be mailed.

(4) Except for records provided by a health care provider under Section 26-1-37, a health care provider who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after receipt of notice; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) $20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

(5) Except for records provided under Section 26-1-37, a person authorized to provide medical records, other than a health care provider under Subsections (3) and (4), who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after the request; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) $20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

Amended by Chapter 33, 2011 General Session
Amended by Chapter 65, 2011 General Session

78B-5-619. Access to medical records of deceased patient.

For purposes of Section 78B-5-618, and 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a health care provider with medical records of a deceased person may recognize the deceased person's surviving spouse or an adult child as a personal representative.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-620. Calibration certificates for breathalizers.

(1) As used in this section:

(a) "Breathalizer" means any device used by a law enforcement agency which utilizes a person's breath to estimate blood alcohol content.

(b) "Calibration" means the manual setting of specific levels on a breathalizer by a person trained to reset the machine to insure as accurate results as possible.

(c) "Certificate of calibration" means the document issued by the person who calibrates a breathalizer, attesting to the accuracy of the machine.

(d) "Department" means the Department of Public Safety created in Section 53-1-103.

(e) "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content.

(2) The department may digitize and post the digital format of certificates of calibration on its website in a secure location not available to the public.

(3) The secure location shall be available to courts and local prosecutors' offices for use in actions in which it is alleged a party was intoxicated and a law enforcement officer required the party to submit to a breathalizer test.

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

(a) to provide a method for insuring the accuracy of the certificates on the website; and

(b) providing for an attestation to the authenticity of the certificate upon download by a prosecutor or court.

Enacted by Chapter 209, 2008 General Session

78B-5-701. Taking of affidavits in this state.

An affidavit to be used before any court, judge, or officer of this state may be taken before any judge, the clerk of any court, any justice court judge, or any notary public in this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-702. Taking of affidavits in another state.

An affidavit taken in another state or territory of the United States, to be used in

this state, may be taken before a commissioner appointed by the governor of this state to take affidavits and depositions in another state or territory, or before any notary public in another state or territory, or before any judge or clerk of a court of record having a seal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-703. Taking of affidavits in foreign country.

An affidavit taken in a foreign country, to be used in this state, may be taken before an ambassador, minister, consul, vice consul or consular agent of the United States, or before any judge of a court of record having a seal, in the foreign country.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-704. Certification of affidavits taken before foreign court or judge.

When an affidavit is taken before a judge or court in another state or territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that the judge is a member of the court, shall be certified by the clerk of the court under the court's seal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-705. Unsworn declaration in lieu of affidavit.

(1) If the Utah Rules of Criminal Procedure, Civil Procedure, or Evidence require or permit a written declaration upon oath, an individual may, with like force and effect, provide an unsworn written declaration, subscribed and dated under penalty of this section, in substantially the following form:

"I declare (or certify, verify, or state) under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed on (date).

(Signature)".

(2) A person who knowingly makes a false written statement as provided under Subsection (1) is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 119, 2008 General Session

78B-5-801. Public and private statutes defined.

Statutes are public and private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-802. Tender -- Offer in writing sufficient -- Objection -- Must be specific or waived.

(1) An offer in writing to pay a particular sum of money or to deliver a written

instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2) The person to whom a tender is made shall, at the time, specify any objection to the money, instrument, or property, or it is considered waived.

(3) If the objection is to the amount of money, the terms of the instrument or the amount or kind of property, the person shall specify the amounts, terms, or kind which is required, or be precluded from objection afterwards.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-803. Receipt may be demanded as condition to payment or deposit.

A person who pays money, or delivers an instrument or property, is entitled to a receipt from the person to whom the payment or delivery is made, and may demand a proper signature to the receipt as a condition of the payment or delivery.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-804. Money deposited in court.

(1) (a) Any person depositing money in court, to be held in trust, shall pay it to the court clerk.

(b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city recorder to be held subject to the order of the court.

(2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and the disposition of interest earnings on those trust funds.

(3) (a) Any interest earned on trust funds in the courts of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted account. Any interest earned on trust funds in the courts not of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in the general fund of the county or municipality.

(b) The Legislature shall appropriate funds from the restricted account of the courts of record to the Judicial Council to:

(i) offset costs to the courts for collection and maintenance of court trust funds; and

(ii) provide accounting and auditing of all court revenue and trust accounts.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-805. State, state officers, and political subdivisions not required to give bond -- Exception for appeal.

(1) Except as provided in Subsection (3), the state, any state officer acting in an official capacity on behalf of the state, or any county, city, or public corporation may not be required to post a bond, written undertaking, or security in order to pursue a civil action.

(2) Upon compliance with the other provisions of the law, the state, any state officer acting in an official capacity, or any county, city, or other public corporation,

has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by law.

(3) A municipality is not exempt from the requirement of posting a bond, obligation, or other security when appealing a judgment for any amount in excess of $5,000,000. To stay the enforcement of any judgment over $5,000,000, a municipality shall be required to post security with the appellate court in the amount by which the judgment exceeds the sum of $5,000,000 and for any interest that may accrue during the appeal.

Repealed and Re-enacted by Chapter 33, 2013 General Session

78B-5-806. Payment of costs by state.

When a state is a party and costs are awarded against it, the costs shall be paid out of the state treasury. The auditor shall draw a warrant on the General Fund for payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-807. Payment of costs by county.

When a county is a party and costs are awarded against it, the costs shall be paid out of the county treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-808. Salaries of public officers subject to garnishment.

The state and any subdivision, agency, or institution of the state which has in its possession or under its control any credits or other personal property of, or owing any debt to, the defendant in any action, whether as salary or wages, as a public official or employee may be subject to attachment, garnishment, and execution in accordance with any rights, remedies, and procedures applicable to attachment, garnishment, and execution, respectively, except as provided in Section 78B-5-809.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-809. Service of process.

Process for a garnishment under Section 78B-5-808 shall be served only upon the auditor of the legal subdivision garnished. If there is no auditor, then process shall be served on the clerk of the subdivision, agency, or institution. The answer of the auditor or clerk shall be final and conclusive.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-810. Sureties on stay bonds entitled to subrogation.

If a surety on an appeal executed to stay proceedings upon a money judgment pays the judgment, either with or without action, after its affirmance by the appellate court, the surety is subrogated to the rights of the judgment creditor, and entitled to

control, enforce, and satisfy the judgment in all respects as if the surety had recovered the same.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-811. Provisions as to depositions made applicable to nonjudicial proceedings.

The provisions of law relating to the taking of depositions in actions pending before the courts of this state are applicable to commissions, boards and officers authorized to subpoena witnesses and take testimony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-812. Release or settlement of personal injury claim -- When voidable.

(1) Any release of liability or settlement agreement entered into within a period of 15 days from the date of an occurrence causing physical injury to any person, or entered into prior to the initial discharge of the person from any hospital or sanitarium in which the injured person is confined as a result of the injuries sustained in the occurrence, is voidable by the injured person, as provided in Sections 78B-5-812 through 78B-5-816.

(2) Notice of cancellation of the release or settlement agreement, together with any payment or other consideration received in connection with the release or agreement shall be mailed or delivered to the party to whom the release or settlement agreement was given, by the later of the following dates:

(a) within 15 days from the date of the occurrence causing the injuries which are subject of the settlement agreement or liability release; or

(b) within 15 days after the date of the injured person's discharge from the hospital or sanitarium in which the person has been confined continuously since the date of the occurrence causing the injury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-813. Statement of injured person -- When inadmissible as evidence.

Except as otherwise provided in Sections 78B-5-812 through 78B-5-816, any statement, either written or oral, obtained from an injured person within 15 days of an occurrence or while the person is confined in a hospital or sanitarium as a result of injuries sustained in the occurrence, and which statement is obtained by a person whose interest is adverse or may become adverse to the injured person, except a peace officer, is not admissible as evidence in any civil proceeding brought by or against the injured person for damages sustained as a result of the occurrence, unless:

(1) a written verbatim copy of the statement has been left with the injured party at the time the statement was taken; and

(2) the statement has not been disavowed in writing within 15 days of the date

of the statement or within 15 days after the date of the injured person's initial discharge from the hospital or sanitarium in which the person has been confined, whichever date is later.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-814. Release, settlement, or statement by injured person -- When rescission or disavowal provisions inapplicable.

Sections 78B-5-812 through 78B-5-816 do not apply if at least five days prior to signing the settlement agreement, liability release, or statement, the injured person signed a statement in writing indicating willingness and agreement to the settlement agreement, liability release, or statement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-815. Release, settlement, or statement by injured person -- Notice of rescission or disavowal.

Notice of cancellation or notice disavowing a statement, if given by mail, is given when it is deposited in a mailbox, properly addressed with postage prepaid. Notice of cancellation given by the injured person need not take a particular form. It is sufficient if it indicates by any form of written expression the intention of the injured person not to be bound by the settlement agreement, liability release, or disavowed statement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-816. Right of rescission or disavowal of release, settlement, or statement by injured person in addition to other provisions.

The rights provided by Sections 78B-5-812 through 78B-5-816 are intended to be in addition to, and not in lieu of, any rights of rescission, rules of evidence, or provisions otherwise existing in the law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-817. Definitions.

As used in Sections 78B-5-817 through 78B-5-823:

(1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

(3) "Person immune from suit" means:

(a) an employer immune from suit under Title 34A, Chapter 2, Workers'

Compensation Act, or Chapter 3, Utah Occupational Disease Act; and

(b) a governmental entity or governmental employee immune from suit pursuant to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(4) "Person seeking recovery" means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-818. Comparative negligence.

(1) The fault of a person seeking recovery may not alone bar recovery by that person.

(2) A person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the person seeking recovery prior to any reallocation of fault made under Subsection 78B-5-819(2).

(3) No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant under Section 78B-5-819.

(4) (a) The fact finder may, and when requested by a party shall, allocate the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault. In the case of a motor vehicle accident involving an unidentified motor vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which may consist solely of one person's testimony.

(b) Any fault allocated to a person immune from suit is considered only to accurately determine the fault of the person seeking recovery and a defendant and may not subject the person immune from suit to any liability, based on the allocation of fault, in this or any other action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-819. Separate special verdicts on total damages and proportion of fault.

(1) The trial court may, and when requested by any party shall, direct the jury, if any, to find separate special verdicts determining the total amount of damages sustained and the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, to any person immune from suit, and to any other person identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault.

(2) (a) If the combined percentage or proportion of fault attributed to all persons immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of fault to zero and reallocate that percentage or proportion of fault to the other parties and those identified under Subsection 78B-5-821(4) for whom there is a factual and legal basis to allocate fault in proportion to the percentage or proportion of fault initially attributed to each by the fact finder. After this

reallocation, cumulative fault shall equal 100% with the persons immune from suit being allocated no fault.

(b) If the combined percentage or proportion of fault attributed to all persons immune from suit is 40% or more, that percentage or proportion of fault attributed to persons immune from suit may not be reduced under Subsection (2)(a).

(c) (i) The jury may not be advised of the effect of any reallocation under Subsection (2).

(ii) The jury may be advised that fault attributed to persons immune from suit may reduce the award of the person seeking recovery.

(3) A person immune from suit may not be held liable, based on the allocation of fault, in this or any other action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-820. Amount of liability limited to proportion of fault -- No contribution.

(1) Subject to Section 78B-5-818, the maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant.

(2) A defendant is not entitled to contribution from any other person.

(3) A defendant or person seeking recovery may not bring a civil action against any person immune from suit to recover damages resulting from the allocation of fault under Section 78B-5-818.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-821. Joinder of defendants.

(1) A person seeking recovery, or any defendant who is a party to the litigation, may join as a defendant, in accordance with the Utah Rules of Civil Procedure, any person other than a person immune from suit alleged to have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.

(2) A person immune from suit may not be named as a defendant, but fault may be allocated to a person immune from suit solely for the purpose of accurately determining the fault of the person seeking recovery and all defendants. A person immune from suit is not subject to any liability, based on the allocation of fault, in this or any other action.

(3) (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules of Civil Procedure, regardless of whether or not money damages are sought.

(b) A person immune from suit who intervenes in an action may not be held liable for any fault allocated to that person under Section 78B-5-818.

(4) Fault may not be allocated to a non-party unless a party timely files a description of the factual and legal basis on which fault can be allocated and information identifying the non-party, to the extent known or reasonably available to

the party, including name, address, telephone number and employer. The party shall file the description and identifying information in accordance with Rule 9, Utah Rules of Civil Procedure or as ordered by the court but in no event later than 90 days before trial as provided in Rule 9, Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-822. Release to one defendant does not discharge other defendants.

A release given by a person seeking recovery to one or more defendants does not discharge any other defendant unless the release so provides.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-823. Effect on immunity, exclusive remedy, indemnity, and contribution.

Nothing in Sections 78B-5-817 through 78B-5-822 affects or impairs any common law or statutory immunity from liability, including, but not limited to, governmental immunity as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah, and the exclusive remedy provisions of Title 34A, Chapter 2, Workers' Compensation Act. Nothing in Sections 78B-5-817 through 78B-5-822 affects or impairs any right to indemnity or contribution arising from statute, contract, or agreement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-824. Personal injury judgments -- Interest authorized.

(1) In all actions brought to recover damages for personal injuries sustained by any person, caused by the negligence or willful intent of another person, corporation, association, or partnership, and whether the injury was fatal or otherwise, the plaintiff, including a counterclaim plaintiff or a crossclaim plaintiff, in the complaint may claim interest on special damages actually incurred.

(2) A plaintiff, including a counterclaim plaintiff or a crossclaim plaintiff, seeking to recover damages for personal injury or wrongful death may claim prejudgment interest if for cases classified as tier 1, pursuant to the Utah Rules of Civil Procedure, the plaintiff tenders:

(a) a written settlement demand, including settlement demands under Utah Rule of Civil Procedure 68; and

(b) the amount of the demand does not exceed 1-1/3 of the amount of the judgment eventually awarded at trial.

(3) For purposes of this statute, the determining offer and counteroffer shall be the last written offer or counteroffer timely tendered by a party, provided that the offer or counteroffer is tendered at least 60 days before trial.

(4) Cases classified as tier 2 or tier 3 by the Utah Rules of Civil Procedure or submitted to binding arbitration in accordance with Sections 18-1-4 and 31A-22-321 are not subject to the requirements outlined in Subsection (2).

(5) (a) Any prejudgment interest shall be computed as simple interest. For first special damages incurred during the year of the occurrence of the act giving rise to the cause of action, any prejudgment interest shall be computed as simple interest accruing from the date on which the first date special damages were actually incurred.

(b) For special damages incurred in successive years, prejudgment interest shall be calculated from January 1 of each year special damages were incurred. The court shall calculate prejudgment interest using a per annum rate, which is two percentage points above the prime rate, as published by the Board of Governors of the Federal Reserve System on the first business day in January of the calendar year in which the judgment is entered. The prejudgment interest rate applied to all cases may not be lower than 5% or higher than 10%.

(6) As used in this section, "special damages actually incurred" does not include damages for future medical expenses, loss of future wages, or loss of future earning capacity.

(7) This section applies to any cause of action arising on or after July 1, 2014.

Amended by Chapter 257, 2014 General Session

78B-5-825. Attorney fees -- Award where action or defense in bad faith -- Exceptions.

(1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-825.5. Attorney fees -- Private attorney general doctrine disavowed.

A court may not award attorney fees under the private attorney general doctrine in any action filed after May 12, 2009.

Enacted by Chapter 373, 2009 General Session

78B-5-826. Attorney fees -- Reciprocal rights to recover attorney fees.

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-827. Attorney fees awarded to state funded agency in action against state or subdivision -- Forfeit of appropriated money.

An agency or organization receiving state funds which, as a result of its suing the state, or political subdivision of the state, receives attorney fees and costs as all or part of a settlement or award, shall forfeit to the General Fund, from its appropriated money, an amount equal to the attorney fees received.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-5-828. Bond required in an environmental action.

(1) As used in this section:

(a) "Administrative stay" means a stay or other temporary remedy issued by an agency under Section 63G-4-405.

(b) "Environmental action" means a cause of action that:

(i) is filed on or after May 10, 2011; and

(ii) seeks judicial review of a final agency action to issue a permit by:

(A) the Department of Natural Resources;

(B) the Department of Transportation; or

(C) the School and Institutional Trust Lands Administration.

(c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in the plaintiff's favor on at least one cause of action.

(2) A plaintiff who obtains a preliminary injunction or administrative stay in an environmental action, but does not ultimately prevail on the merits of the environmental action, is liable for damages sustained by a defendant who:

(a) opposed the preliminary injunction or administrative stay; and

(b) was harmed by the preliminary injunction.

(3) A court may not issue a preliminary injunction and an agency may not grant an administrative stay in an environmental action until the plaintiff posts with the court or the agency a surety bond or cash equivalent:

(a) in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay;

(b) written by a surety licensed to do business in the state; and

(c) payable to each defendant opposing the preliminary injunction or administrative stay in the event the plaintiff does not prevail on the merits of the environmental action.

(4) If there is more than one plaintiff, the court or agency shall establish the amount of the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.

(5) (a) If the plaintiff does not ultimately prevail on the merits of the environmental action, the court shall execute the bond and award damages to each defendant who:

(i) opposed the preliminary injunction or administrative stay; and

(ii) was harmed as a result of its issuance.

(b) If the amount of money secured by the surety bond or cash equivalent:

(i) exceeds the damages awarded, the court or agency shall return the excess to the plaintiff; and

(ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay the remaining damages.

(6) Notwithstanding any other provision of law, a court's or agency's refusal to require the posting of a surety bond or cash equivalent as required by this section is subject to immediate appeal.

Enacted by Chapter 116, 2011 General Session

78B-6-101. Title.

This part is known as the "Utah Adoption Act."

Enacted by Chapter 3, 2008 General Session

78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of each party.

(1) It is the intent and desire of the Legislature that in every adoption the best interest of the child should govern and be of foremost concern in the court's determination.

(2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.

(3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(4) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting as defined in this part.

(5) The Legislature also finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child;

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth; and

(f) the state has a compelling interest in requiring unmarried biological fathers to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(6) (a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

(e) An unmarried biological father has the primary responsibility to protect his rights.

(f) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(7) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-103. Definitions.

As used in this part:

(1) "Adoptee" means a person who:
(a) is the subject of an adoption proceeding; or
(b) has been legally adopted.
(2) "Adoption" means the judicial act that:
(a) creates the relationship of parent and child where it did not previously exist; and
(b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any other person with respect to the child.
(3) "Adoption service provider" means a:
(a) child-placing agency; or
(b) licensed counselor who has at least one year of experience providing professional social work services to:
(i) adoptive parents;
(ii) prospective adoptive parents; or
(iii) birth parents.
(4) "Adoptive parent" means a person who has legally adopted an adoptee.
(5) "Adult" means a person who is 18 years of age or older.
(6) "Adult adoptee" means an adoptee who is 18 years of age or older.
(7) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.
(8) "Birth mother" means the biological mother of a child.
(9) "Birth parent" means:
(a) a birth mother;
(b) a man whose paternity of a child is established;
(c) a man who:
(i) has been identified as the father of a child by the child's birth mother; and
(ii) has not denied paternity; or
(d) an unmarried biological father.
(10) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.
(11) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
(12) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.
(13) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.
(14) "Genetic and social history" means a comprehensive report, when obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following information:
(a) medical history;
(b) health status;
(c) cause of and age at death;
(d) height, weight, and eye and hair color;
(e) ethnic origins;
(f) where appropriate, levels of education and professional achievement; and

(g) religion, if any.

(15) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

(16) "Identifying information" means the name and address of a pre-existing parent or adult adoptee, or other specific information which by itself or in reasonable conjunction with other information may be used to identify that person.

(17) "Licensed counselor" means a person who is licensed by the state, or another state, district, or territory of the United States as a:

(a) certified social worker;

(b) clinical social worker;

(c) psychologist;

(d) marriage and family therapist;

(e) professional counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(18) "Man" means a male individual, regardless of age.

(19) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

(20) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(21) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (21)(a) at the time of the child's conception or birth.

(22) "Pre-existing parent" means:

(a) a birth parent; or

(b) a person who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(23) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.

(24) "Unmarried biological father" means a person who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection (24)(a) at the time of the child's conception or birth.

Amended by Chapter 340, 2012 General Session

78B-6-104. Limitations.

(1) Sections 78B-6-143 through 78B-6-145 do not apply to adoptions by a stepparent whose spouse is the adoptee's parent.

(2) Sections 78B-6-143 through 78B-6-145 apply only to adoptions of adoptees born in this state.

Amended by Chapter 237, 2010 General Session

78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the prospective adoptive parent resides;

(b) if the prospective adoptive parent is not a resident of this state, in the district where:

(i) the adoptee was born;

(ii) the adoptee resides on the day on which the petition is filed; or

(iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or

(c) with the juvenile court as provided in Subsection 78A-6-103(1).

(2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).

(3) A petition for adoption:

(a) may be filed before the birth of a child;

(b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(i) the time for filing has been extended by the court; or

(ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

(i) a prospective adoptive parent; or

(ii) an unmarried mother without her consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Amended by Chapter 458, 2013 General Session

78B-6-106. Responsibility of each party for own actions -- Fraud or misrepresentation.

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best interest of the child, in accordance with the provisions of Section 78B-6-133.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-107. Compliance with the Interstate Compact on Placement of Children -- Compliance with the Indian Child Welfare Act.

(1) In any adoption proceeding the petition for adoption shall state whether the child was born in another state and, if so, both the petition and the court's final decree of adoption shall state that the requirements of Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children, have been complied with.

(2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C. Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 137, 2008 General Session

78B-6-108. Alien child -- Evidence of lawful admission to United States required.

(1) As used in this section, "alien child" means a child under 16 years of age who is not considered a citizen or national of the United States by the United States Immigration and Naturalization Service.

(2) Any person adopting an alien child shall file with the petition for adoption written evidence from the United States Immigration and Naturalization Service that the child was inspected and:

(a) admitted into the United States for permanent residence;

(b) admitted into the United States temporarily in one of the lawful nonimmigrant categories specified in 8 U.S.C. Section 1101(a)(15); or

(c) paroled into the United States pursuant to 8 U.S.C. Section 1182(d)(5).

(3) The 1992 amendments to this section are retroactive to September 1, 1984. Any adoption decree entered after September 1, 1984, is considered valid if the requirements of Subsection (2), as amended, were met.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-109. Determination of rights prior to adoption petition.

(1) (a) Any interested person may petition a court having jurisdiction over adoption proceedings for a determination of the rights and interests of any person who may claim an interest in a child under this part.

(b) The petition described in Subsection (1) may be filed at any time before the finalization of the adoption, including before:

(i) the child's birth;

(ii) a petition for adoption is filed; or

(iii) a petition to terminate parental rights is filed.

(2) If a petition for adoption or a petition to terminate parental rights has been filed in district court, the petitioner or any interested person may, without filing a separate petition, move the court for a determination of the rights and interests of any person who may claim an interest in a child under this part.

Amended by Chapter 237, 2010 General Session

78B-6-110. Notice of adoption proceedings.

(1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and

(ii) has a duty to protect his own rights and interests.

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:

(i) waiver;

(ii) relinquishment;

(iii) actual consent, as described in Subsection (12); or

(iv) judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) a person who is:

(i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and

(ii) holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.

(3) (a) In order to preserve any right to notice, an unmarried biological father shall, consistent with Subsection (3)(d):

(i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health.

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.

(c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.

(d) When the state registrar of vital statistics receives a completed form, the registrar shall:

(i) record the date and time the form was received; and

(ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).

(e) The action and notice described in Subsection (3)(a):

(i) may be filed before or after the child's birth; and

(ii) shall be filed prior to the mother's:

(A) execution of consent to adoption of the child; or

(B) relinquishment of the child for adoption.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;

(b) shall be served at least 30 days prior to the final dispositional hearing;

(c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)(a), within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;

(d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

(e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and

(f) shall state where the person may obtain a copy of the petition for adoption.

(6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

(i) within 30 days after the day on which the person was served with notice of

the adoption proceeding;

(ii) setting forth specific relief sought; and

(iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

(i) waives any right to further notice in connection with the adoption;

(ii) forfeits all rights in relation to the adoptee; and

(iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

(ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.

(iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.

(b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.

(ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:

(a) intervene in the adoption; and

(b) present evidence to the court relevant to the best interest of the child.

(12) In order to be excused from the requirement to provide notice as described in Subsection (2)(a) on the grounds that the person has provided consent to the adoption proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described in Section 78B-6-120.1.

Amended by Chapter 410, 2014 General Session

78B-6-110.1. Prebirth notice to presumed father of intent to place a child for adoption.

(1) As used in this section, "birth father" means:

(a) a potential biological father; or

(b) an unmarried biological father.

(2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:

(a) the child's mother;

(b) a licensed child placing agency;

(c) an attorney representing a prospective adoptive parent of the child; or

(d) an attorney representing the mother of the child.

(3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.

(4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:

(a) the mother's intent to place the child for adoption;

(b) that the mother has named the person receiving this notice as a potential birth father of her child;

(c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:

(i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:

(A) that the birth father is fully able and willing to have full custody of the child;

(B) the birth father's plans to care for the child; and

(C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and

(ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;

(d) the consequences for failure to comply with Subsection (4)(c), including that:

(i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost;

(ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and

(iii) the birth father will lose the right, if any, to notice of any adoption proceedings related to the child;

(e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and

(f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.

(5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:

(a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;

(b) the ability to assert the right to contest any future adoption of the child described in the notice; and

(c) the right to notice of any adoption proceedings relating to the child described in the notice.

(6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Enacted by Chapter 340, 2012 General Session

78B-6-110.5. Out-of-state birth mothers and adoptive parents -- Declaration regarding potential birth fathers.

(1) (a) For a child who is six months of age or less at the time the child is placed with prospective adoptive parents, if, at any point during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption, the birth mother or at least one of the adoptive parents has not resided in the state for 90 total days or more, as described in Subsection (1)(c), the birth mother shall file with the court a declaration regarding each potential birth father, in accordance with this section, before or at the time a petition for adoption is filed with the court.

(b) The birth mother shall search the putative father registry of each state where the birth mother believes the child may have been conceived and each state where the birth mother lived during her pregnancy, if the state has a putative father registry, to determine whether a potential birth father registered with the state's putative father registry.

(c) In determining whether the 90-day requirement is satisfied, the following apply:

(i) the 90 days are not required to be consecutive;

(ii) no absence from the state may be for more than seven consecutive days;

(iii) any day on which the individual is absent from the state does not count toward the total 90-day period; and

(iv) the 90-day period begins and ends during a period that is no more than 120 consecutive days.

(2) The declaration filed under Subsection (1) regarding a potential birth father shall include, for each potential birth father, the following information:

(a) if known, the potential birth father's name, date of birth, Social Security number, and address;

(b) with regard to a state's putative father registry in each state described in Subsection (1)(b):

(i) whether the state has a putative father registry; and

(ii) for each state that has a putative father registry, with the declaration, a

certificate or written statement from the state's putative father registry that a search of the state's putative father registry was made and disclosing the results of the search;

(c) whether the potential birth father was notified of:

(i) the birth mother's pregnancy;

(ii) the fact that he is a potential birth father; or

(iii) the fact that the birth mother intends to consent to adoption or relinquishment of the child for adoption, in Utah;

(d) each state where the birth mother lived during the pregnancy;

(e) if known, the state in which the child was conceived;

(f) whether the birth mother informed the potential birth father that she was traveling to or planning to reside in Utah;

(g) whether the birth mother has contacted the potential birth father while she was located in Utah;

(h) whether, and for how long, the potential birth father has ever lived with the child;

(i) whether the potential birth father has given the birth mother money or offered to pay for any of her expenses during pregnancy or the child's birth;

(j) whether the potential birth father has offered to pay child support;

(k) if known, whether the potential birth father has taken any legal action to establish paternity of the child, either in Utah or in any other state, and, if known, what action he has taken; and

(l) whether the birth mother has ever been involved in a domestic violence matter with the potential birth father.

(3) Based on the declaration regarding the potential birth father, the court shall order the birth mother to serve a potential birth father notice that she intends to consent or has consented to adoption or relinquishment of the child for adoption, if the court finds that the potential birth father:

(a) has taken sufficient action to demonstrate an interest in the child;

(b) has taken sufficient action to attempt to preserve his legal rights as a birth father, including by filing a legal action to establish paternity or filing with a state's putative father registry; or

(c) does not know, and does not have a reason to know, that:

(i) the mother or child are present in Utah;

(ii) the mother intended to give birth to the child in Utah;

(iii) the child was born in Utah; or

(iv) the mother intends to consent to adoption or relinquishment of the child for adoption in Utah.

(4) Notice under this section shall be made in accordance with Subsections 78B-6-110(7) through (12).

Enacted by Chapter 410, 2014 General Session

78B-6-111. Criminal sexual offenses.

A biological father is not entitled to notice of an adoption proceeding, nor is the consent of a biological father required in connection with an adoption proceeding, in cases where it is shown that the child who is the subject of the proceeding was

conceived as a result of conduct which would constitute any sexual offense described in Title 76, Chapter 5, Part 4, regardless of whether the biological father is formally charged with or convicted of a criminal offense.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-112. District court jurisdiction over certain termination of parental rights proceedings.

(1) A district court has jurisdiction to hear and decide a petition to terminate parental rights in a child if the party who filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child.

(2) A petition to terminate parental rights under this section may be:

(a) joined with a proceeding on an adoption petition; or

(b) filed as a separate proceeding before or after a petition to adopt the child is filed.

(3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.

(4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.

(b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.

(5) The district court may terminate a person's parental rights in a child if:

(a) the person executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:

(i) the requirements of this chapter; or

(ii) the laws of another state or country, if the consent is valid and irrevocable;

(b) the person is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

(c) the person:

(i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and

(ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the person was served with notice of the adoption proceeding;

(d) the court finds, under Section 78B-15-607, that the person is not a parent of the child; or

(e) the person's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental rights is in the best interests of the child.

Amended by Chapter 340, 2012 General Session

78B-6-113. Prospective adoptive parent not a resident -- Preplacement requirements.

(1) When an adoption petition is to be finalized in this state with regard to any

prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the prospective adoptive parent shall:

(a) comply with the provisions of Sections 78B-6-128 and 78B-6-130; and

(b) (i) if the child is in state custody:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or

(ii) subject to Subsection (2), if the child is not in state custody:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or

(B) complete a criminal records check and child abuse database check for each state and, if available, country, where the prospective adoptive parent resided during the five years immediately preceding the day on which the adoption petition is to be finalized.

(2) For purposes of Subsection (1)(b)(ii):

(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101:

(i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; and

(ii) subject to Subsection (3), the criminal history check described in Subsection (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party; and

(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (1)(b)(ii), shall be:

(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or

(ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party.

(3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.

(4) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

Amended by Chapter 340, 2012 General Session

78B-6-114. Adoption by married persons -- Consent.

(1) A married man who is not lawfully separated from his wife may not adopt a child without the consent of his wife, if his wife is capable of giving consent.

(2) A married woman who is not lawfully separated from her husband may not adopt a child without his consent, if he is capable of giving his consent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.

(1) For purposes of this section, "vulnerable adult" means:

(a) a person 65 years of age or older; or

(b) an adult, 18 years of age or older, who has a mental or physical impairment which substantially affects that person's ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or medical or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) carry out the activities of daily living;

(v) manage the adult's own resources; or

(vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.

(3) The following provisions of this part apply to the adoption of an adult just as though the person being adopted were a minor:

(a) (i) Section 78B-6-108;

(ii) Section 78B-6-114;

(iii) Section 78B-6-116;

(iv) Section 78B-6-118;

(v) Section 78B-6-124;

(vi) Section 78B-6-136;

(vii) Section 78B-6-137;

(viii) Section 78B-6-138;

(ix) Section 78B-6-139;

(x) Section 78B-6-141; and

(xi) Section 78B-6-142;

(b) Subsections 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from a case where the juvenile court has continuing jurisdiction over the adult adoptee; and

(c) if the adult adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the adult adoptee resides, or will reside, with the adoptors, unless the court, based on a finding of good cause, waives the

requirements of those sections.

(4) Before a court enters a final decree of adoption of an adult, the adoptee and the prospective adoptive parent or parents shall appear before the court presiding over the adoption proceedings and execute consent to the adoption.

(5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Amended by Chapter 340, 2012 General Session

78B-6-116. Notice and consent for adoption of an adult.

(1) (a) Consent to the adoption of an adult is required from:

(i) the adult adoptee;

(ii) any person who is adopting the adult;

(iii) the spouse of a person adopting the adult; and

(iv) any legally appointed guardian or custodian of the adult adoptee.

(b) No person, other than a person described in Subsection (1)(a), may consent, or withhold consent, to the adoption of an adult.

(2) (a) Except as provided in Subsection (2)(b), notice of a proceeding for the adoption of an adult shall be served on each person described in Subsection (1)(a) and the spouse of the adoptee.

(b) The notice described in Subsection (2)(a) may be waived, in writing, by the person entitled to receive notice.

(3) The notice described in Subsection (2):

(a) shall be served at least 30 days before the day on which the adoption is finalized;

(b) shall specifically state that the person served must respond to the petition within 30 days of service if the person intends to intervene in the adoption proceeding;

(c) shall state the name of the person to be adopted;

(d) may not state the name of a person adopting the adoptee, unless the person consents, in writing, to disclosure of the person's name;

(e) with regard to a person described in Subsection (1)(a):

(i) except as provided in Subsection (2)(b), shall be in accordance with the provisions of the Utah Rules of Civil Procedure; and

(ii) may not be made by publication; and

(f) with regard to the spouse of the adoptee, may be made:

(i) in accordance with the provisions of the Utah Rules of Civil Procedure;

(ii) by certified mail, return receipt requested; or

(iii) by publication, posting, or other means if:

(A) the service described in Subsection (3)(f)(ii) cannot be completed after two attempts; and

(B) the court issues an order providing for service by publication, posting, or other means.

(4) Proof of service of the notice on each person to whom notice is required by this section shall be filed with the court before the adoption is finalized.

(5) (a) Any person who is served with notice of a proceeding for the adoption of an adult and who wishes to intervene in the adoption shall file a motion in the

adoption proceeding:

(i) within 30 days after the day on which the person is served with notice of the adoption proceeding;

(ii) that sets forth the specific relief sought; and

(iii) that is accompanied by a memorandum specifying the factual and legal grounds upon which the motion is made.

(b) A person who fails to file the motion described in Subsection (5)(a) within the time described in Subsection (5)(a)(i):

(i) waives any right to further notice of the adoption proceeding; and

(ii) is barred from intervening in, or bringing or maintaining any action challenging, the adoption proceeding.

(6) Except as provided in Subsection (7), after a court enters a final decree of adoption of an adult, the adult adoptee shall:

(a) serve notice of the finalization of the adoption, pursuant to the Utah Rules of Civil Procedure, on each person who was a legal parent of the adult adoptee before the final decree of adoption described in this Subsection (6) was entered; and

(b) file with the court proof of service of the notice described in Subsection (6)(a).

(7) A court may, based on a finding of good cause, waive the notification requirement described in Subsection (6).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-117. Who may adopt -- Adoption of minor.

(1) A minor child may be adopted by an adult person, in accordance with the provisions and requirements of this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsection (4), any single adult, except as provided in Subsection (3).

(3) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.

(4) In order to provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a man and a woman who are married to each other, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with a person who has already developed a substantial relationship with the child;

(d) the child is placed with a person who:

(i) is selected by a parent or former parent of the child, if the parent or former

parent consented to the adoption of the child; and

(ii) the parent or former parent described in Subsection (4)(d)(i):

(A) knew the person with whom the child is placed before the parent consented to the adoption; or

(B) became aware of the person with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or

(e) it is in the best interests of the child to place the child with a single person.

Enacted by Chapter 3, 2008 General Session

78B-6-118. Relative ages.

A person adopting a child must be at least 10 years older than the child adopted, unless the petitioners for adoption are a married couple, one of which is at least 10 years older than the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-119. Counseling for parents.

(1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency, or consenting to the adoption of a child, a parent of the child has the right to participate in counseling:

(a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling;

(b) for up to three sessions of at least 50 minutes per session; and

(c) subject to Subsection (2)(b), at the expense of the:

(i) child-placing agency; or

(ii) prospective adoptive parents.

(2) (a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.

(b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed $400, unless an agreement for a greater amount is signed by:

(i) the parent who receives the counseling; and

(ii) the child-placing agency or prospective adoptive parents.

(3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:

(a) child-placing agency;

(b) prospective adoptive parents; or

(c) representative of a person described in Subsection (3)(a) or (b).

(4) (a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:

(i) is signed by each parent who:

(A) relinquishes the parent's parental rights; or

(B) consents to the adoption; and

(ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or (B), the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:

(A) child-placing agency; or

(B) prospective adoptive parents.

(b) The statement described in Subsection (4)(a) may be included in the document that:

(i) relinquishes the parent's parental rights; or

(ii) consents to the adoption.

(c) Failure by a person to give the notice described in Subsection (3), or pay for the counseling described in this section:

(i) shall not constitute grounds for invalidating a:

(A) relinquishment of parental rights; or

(B) consent to adoption; and

(ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by the parent or guardian who took the action described in Subsection (4)(c)(i)(A) or (B) against the person required to:

(A) give the notice described in Subsection (3); or

(B) pay for the counseling described in this section.

Amended by Chapter 159, 2009 General Session

78B-6-120. Necessary consent to adoption or relinquishment for adoption.

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) a man who:

(i) by operation of law under Section 78B-15-204, is recognized as the father of the proposed adoptee, unless:

(A) the presumption is rebutted under Section 78B-15-607; or

(B) the man was not married to the mother of the proposed adoptee until after the mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or

(ii) is the father of the adoptee by a previous legal adoption;

(c) the mother of the adoptee;

(d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.

(b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.

(3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:

(a) can be accessed by the Department of Health; and

(b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

Amended by Chapter 458, 2013 General Session

78B-6-120.1. Implied consent.

(1) (a) As used in this section, "abandonment" means failure of a father, with reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to the birth mother for a period of six months before the day on which the adoptee is born.

(b) A court may not determine that a father abandoned the birth mother if the father failed to provide financial or emotional support because the birth mother refused to accept support.

(2) (a) As used in this section, "emotional support" means a pattern of statements or actions that indicate to a reasonable person that a father intends to provide for the physical and emotional well-being of an unborn child.

(b) A court may not find that a father failed to provide emotional support if the father's failure was due to impossibility of performance.

(3) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be implied by any of the following acts:

(a) abandonment;

(b) leaving the adoptee with a third party, without providing the third party with the parent's identification, for 30 consecutive days;

(c) knowingly leaving the adoptee with another person, without providing for support, communicating, or otherwise maintaining a substantial relationship with the adoptee, for six consecutive months; or

(d) receiving notification of a pending adoption proceeding under Subsection 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond as required.

(4) Implied consent under Subsection (3)(a) may not be withdrawn.

(5) Nothing in this section negates the requirements of Section 78B-6-121 or 78B-6-122 for an unmarried biological father.

Enacted by Chapter 458, 2013 General Session

78B-6-121. Consent of unmarried biological father.

(1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

(a) (i) developed a substantial relationship with the child by:

(A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or

(B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;

(ii) took some measure of responsibility for the child and the child's future; and

(iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or

(b) (i) openly lived with the child:

(A) (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or

(II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with prospective adoptive parents; and

(B) immediately preceding placement of the child with prospective adoptive parents; and

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

(a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;

(b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

(i) stating that he is fully able and willing to have full custody of the child;

(ii) setting forth his plans for care of the child; and

(iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

(i) he did not have actual knowledge of the pregnancy;

(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

(4) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics.

(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).

(6) Consent of an unmarried biological father is not required under this section if:

(a) the court determines, in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;

(b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

(7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(c); and

(b) (i) that no filing has been found pertaining to the father of the child in question; or

(ii) if a filing is found, the name of the putative father and the time and date of filing.

Amended by Chapter 278, 2013 General Session
Amended by Chapter 458, 2013 General Session

78B-6-122. Qualifying circumstance.

(1) (a) For purposes of this section, "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption:

(i) the child or the child's mother resided on a permanent basis, or a temporary basis of no less than 30 consecutive days, in the state;

(ii) the mother intended to give birth to the child in the state;

(iii) the child was born in the state; or

(iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption:

(A) in the state; or

(B) under the laws of the state.

(b) For purposes of Subsection (1)(c)(i)(C) only, when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, a court shall consider the totality of the circumstances, including, if applicable:

(i) efforts he has taken to discover the location of the child or the child's mother;

(ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;

(iii) whether, and to what extent, he has developed, or attempted to develop, a relationship with the child;

(iv) whether he offered to provide and, if the offer was accepted, did provide, financial support for the child or the child's mother;

(v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;

(vi) whether he has filed legal proceedings to establish his paternity of, and take responsibility for, the child;

(vii) whether he has filed a notice with a public official or agency relating to:

(A) his paternity of the child; or

(B) legal proceedings to establish his paternity of the child; or

(viii) other evidence that demonstrates that he has demonstrated a full commitment to his parental responsibilities.

(c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

(i) (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

(B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:

(I) the last state where the unmarried biological father knew, or through the

exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or

(II) the state where the child was conceived; and

(C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b); or

(ii) (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and

(B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:

(I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

(II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.

(2) An unmarried biological father who does not fully and strictly comply with the requirements of Section 78B-6-121 and this section is considered to have waived and surrendered any right in relation to the child, including the right to:

(a) notice of any judicial proceeding in connection with the adoption of the child; and

(b) consent, or refuse to consent, to the adoption of the child.

Amended by Chapter 474, 2013 General Session

78B-6-122.5. Effect of out-of-state paternity adjudication, declaration, or acknowledgment.

Unless a person who is an unmarried biological father has fully and strictly complied with the requirements of Sections 78B-6-120 through 78B-6-122, an out-of-state order that adjudicates paternity, or an out-of-state declaration or acknowledgment of paternity:

(1) only has the effect of establishing that the person is an unmarried biological father of the child to whom the order, declaration, or acknowledgment relates; and

(2) does not entitle the person to:

(a) notice of any judicial proceeding related to the adoption of the child;

(b) the right to consent, or refuse to consent, to the adoption of the child; or

(c) the right to custody of, control over, or visitation with the child.

Enacted by Chapter 237, 2010 General Session

78B-6-123. Power of a minor to consent or relinquish.

(1) A minor parent has the power to:

(a) consent to the adoption of the minor's child; and

(b) relinquish the minor's control or custody of the child for adoption.

(2) The consent or relinquishment described in Subsection (1) is valid and has the same force and effect as a consent or relinquishment executed by an adult parent.

(3) A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-124. Persons who may take consents and relinquishments.

(1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

(a) a judge of any court that has jurisdiction over adoption proceedings;

(b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or

(c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.

(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:

(a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;

(b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;

(c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or

(d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.

(3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).

(4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.

(6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

(a) notarized; or

(b) witnessed by two individuals who are not members of the birth mother's or

the signatory's immediate family.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 137, 2008 General Session

78B-6-125. Time period prior to birth mother's consent.

(1) A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.

(2) The consent or relinquishment of any other person as required by Sections 78B-6-120 and 78B-6-121 may be executed at any time, including prior to the birth of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-126. When consent or relinquishment effective.

A consent or relinquishment is effective when it is signed and may not be revoked.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-127. Parents whose rights have been terminated.

Neither notice nor consent to adoption or relinquishment for adoption is required from a parent whose rights with regard to an adoptee have been terminated by a court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-128. Preplacement adoptive evaluations -- Exceptions.

(1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

(b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The prospective adoptive parent described in this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.

(d) The required preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent. If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement

adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.

(2) The preplacement adoptive evaluation shall include:

(a) criminal history record information regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:

(i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or

(ii) subject to Subsection (3), if the child is not in state custody, each prospective adoptive parent and any other adult living in the prospective home shall:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or

(B) complete a criminal records check, if available, for each state and country where the prospective adoptive parent and any adult living in the prospective adoptive home resided during the five years immediately preceding the day on which the adoption petition is to be finalized;

(b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home, pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:

(i) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is a resident of Utah, is prepared by the Department of Human Services from the records of the Department of Human Services; or

(ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;

(c) in accordance with Subsection (6), an evaluation conducted by:

(i) an expert in family relations approved by the court;

(ii) a certified social worker;

(iii) a clinical social worker;

(iv) a marriage and family therapist;

(v) a psychologist;

(vi) a social service worker, if supervised by a certified or clinical social worker; or

(vii) a professional counselor; and

(d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 62A-4a-902, the preplacement evaluation shall be conducted by the Department of Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement evaluations for children with special needs.

(3) For purposes of Subsection (2)(a)(ii):

(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101:

(i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted through the Criminal Investigations and Technical Services Division of the Department of Public Safety, in accordance with the provisions of Section 62A-2-120; and

(ii) subject to Subsection (4), the criminal history check described in Subsection (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party; and

(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or

(ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party.

(4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.

(5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

(6) (a) A person described in Subsection (2)(c) shall be licensed to practice under the laws of:

(i) this state; or

(ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.

(b) The evaluation described in Subsection (2)(c) shall be in a form approved by the Department of Human Services.

(c) Neither the Department of Human Services nor any of its divisions may

proscribe who qualifies as an expert in family relations or who may conduct evaluations under Subsection (2)(c).

(7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the responsibility of the adopting parent or parents.

(8) The person or agency conducting the preplacement adoptive evaluation shall, in connection with the evaluation, provide the prospective adoptive parent or parents with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:

(a) the adoption process;

(b) developmental issues that may require early intervention; and

(c) community resources that are available to the prospective adoptive parent or parents.

(9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Amended by Chapter 458, 2013 General Session

78B-6-129. Postplacement adoptive evaluations.

(1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:

(a) verification of the allegations of fact contained in the petition for adoption;

(b) an evaluation of the progress of the child's placement in the adoptive home; and

(c) a recommendation regarding whether the adoption is in the best interest of the child.

(2) The exemptions from and requirements for evaluations, described in Subsections 78B-6-128(1)(c), (2)(c), (6), and (8), also apply to postplacement adoptive evaluations.

(3) Upon the request of the petitioner, the court may waive the postplacement adoptive evaluation, unless it determines that it is in the best interest of the child to require the postplacement evaluation.

Amended by Chapter 340, 2012 General Session

78B-6-130. Preplacement and postplacement adoptive studies -- Review by court.

(1) If the person or agency conducting the evaluation disapproves the adoptive placement, either in the preplacement or postplacement adoptive evaluation, the court may dismiss the petition. However, upon request of a prospective adoptive parent, the court shall order that an additional preplacement or postplacement adoptive evaluation be conducted, and hold a hearing on the suitability of the adoption, including testimony of interested parties.

(2) Prior to finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement and postplacement adoptive studies required by Sections 78B-6-128 and 78B-6-129.

Enacted by Chapter 3, 2008 General Session

78B-6-131. Child in custody of state -- Placement.

(1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in Subsection (2), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent, prospective adoptive parent, and any other adult residing in the household;

(b) the Department of Human Services conducts a check of the child abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect;

(c) the Department of Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(d) each person required to undergo a background check described in this section passes the background check, pursuant to the provisions of Section 62A-2-120.

(2) The requirements under Subsection (1) do not apply to the extent that:

(a) federal law or rule permits otherwise; or

(b) the requirements would prohibit the division or a court from placing a child with:

(i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (1).

Amended by Chapter 293, 2012 General Session

78B-6-132. Children in the custody of the Division of Child and Family Services -- Consideration of child's relationship with foster parents who petition for adoption.

(1) In assessing the best interest of a child in the custody of the Division of Child and Family Services whose foster parents have petitioned for adoption, the court shall give special consideration to the relationship of the child with his foster

parents, if the child has been in that home for a period of six months or longer.

(2) Nothing in this section shall be construed as requiring an adoption that would be contrary to the public policy of placing an adoptable child with a married couple whenever possible.

Amended by Chapter 281, 2012 General Session

78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.

(1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(2) (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.

(b) If there are not proper grounds to terminate the person's parental rights, the court shall:

(i) dismiss the adoption petition;

(ii) conduct an evidentiary hearing to determine who should have custody of the child; and

(iii) award custody of the child in accordance with the child's best interest.

(3) Evidence considered at the custody hearing may include:

(a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and

(b) any detriment that a change in custody may cause the child.

(4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:

(a) the person is unfit or incompetent to be a parent;

(b) the person has neglected or abandoned the child;

(c) the person is not interested in having custody of the child; or

(d) the person has forfeited the person's parental presumption.

(5) Any custody order entered pursuant to this section may also:

(a) include provisions for:

(i) parent-time; or

(ii) visitation by an interested third party; and

(b) provide for the financial support of the child.

(6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).

(b) The court may also finalize the adoption if doing so is in the best interest of the child.

(7) (a) A person may not contest an adoption after the final decree of adoption

is entered, if that person:

(i) was a party to the adoption proceeding;

(ii) was served with notice of the adoption proceeding; or

(iii) executed a consent to the adoption or relinquishment for adoption.

(b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.

(c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:

(i) regardless of whether the adoption is contested directly or collaterally; and

(ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.

(d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:

(i) a final decree of adoption; or

(ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).

Amended by Chapter 237, 2010 General Session

78B-6-134. Custody pending final decree.

(1) (a) A licensed child placing adoption agency, or a petitioner if the petition for adoption is filed before a child's birth, may seek an order establishing that the agency or petitioner shall have temporary custody of the child from the time of birth.

(b) The court shall grant an order for temporary custody under Subsection (1)(a) upon determining that:

(i) the birth mother or both birth parents consent to the order;

(ii) the agency or petitioner is willing and able to take custody of the child; and

(iii) an order will be in the best interest of the child.

(c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth parents withdraw their consent.

(2) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.

(3) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

Amended by Chapter 458, 2013 General Session

78B-6-135. Division of Child and Family Services -- Duties -- Report -- Fee.

(1) At the request of the court, the division, through its field agents, persons licensed by the division for the care and placement of children, or through the probation officer of the juvenile court or court of like jurisdiction of the county, under the division's supervision, shall:

(a) verify the allegations of the petition for adoption of a minor child;

(b) make a thorough investigation of the matter; and

(c) report the division's findings in writing to the court.

(2) (a) When the court requests an investigation under Subsection (1), the court shall serve a copy of the petition, together with a statement containing the names and addresses of the child and petitioners, on the division by certified mail.

(b) The division, or the person appointed by the division, shall complete the investigation described in Subsection (2)(a) and submit a written report to the court within 60 days after the day that the petition is served on the division.

(3) (a) The division shall charge the petitioner a reasonable fee for the services provided under this section.

(b) Fees collected shall be deposited in the General Fund.

(4) The written report submitted to the court under this section shall state:

(a) why the pre-existing parents, if living, desire to be released from the care, support, and guardianship of the child;

(b) whether the pre-existing parents have abandoned the child or are unfit for custody;

(c) whether the prospective adoptive parent or parents are financially able and morally fit to have the care, supervision, and training of the child;

(d) the physical and mental condition of the child, so far as that may be determined; and

(e) any other facts and circumstances pertaining to the child and the child's welfare.

(5) (a) The court shall conduct a full hearing on the petition for adoption and examine the parties in interest under oath.

(b) The court may adjourn the hearing from time to time as the nature of the case requires.

(6) If the report submitted by the division under Subsection (2) disapproves of the adoption of the child by the petitioner, the court may dismiss the petition.

Amended by Chapter 340, 2012 General Session

78B-6-136. Final decree of adoption -- Agreement by adoptive parent or parents.

(1) Except as provided in Subsection (2), before the court enters a final decree of adoption:

(a) the prospective adoptive parent or parents and the child being adopted shall appear before the appropriate court; and

(b) the prospective adoptive parent or parents shall execute an agreement stating that the child shall be adopted and treated in all respects as the adoptive

parent's or parents' own lawful child.

(2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement described in Subsection (1)(a) if:

(a) the adoption is not contested;

(b) the prospective adoptive parent or parents:

(i) execute an agreement stating that the child shall be adopted and treated in all respects as the parent's or parents' own lawful child;

(ii) have the agreement described in Subsection (2)(b)(i) notarized; and

(iii) file the agreement described in Subsection (2)(b)(i) with the court; and

(c) all requirements of this chapter to obtain a final decree of adoption are otherwise complied with.

Amended by Chapter 340, 2012 General Session

78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.

(1) Except as provided in Subsection (2), a final decree of adoption may not be entered until the earlier of:

(a) when the child has lived in the home of the prospective adoptive parent for six months; or

(b) when the child has been placed for adoption with the prospective adoptive parent for six months.

(2) (a) If the prospective adoptive parent is the spouse of the pre-existing parent, a final decree of adoption may not be entered until the child has lived in the home of that prospective adoptive parent for one year, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.

(b) The court may, based on a finding of good cause, order that the final decree of adoption be entered at an earlier time than described in Subsection (1).

(3) If the child dies during the time that the child is placed in the home of a prospective adoptive parent or parents for the purpose of adoption, the court has authority to enter a final decree of adoption after the child's death upon the request of the prospective adoptive parents.

(4) The court may enter a final decree of adoption declaring that a child is adopted by both a deceased and a surviving adoptive parent if, after the child is placed in the home of the child's prospective adoptive parents:

(a) one of the prospective adoptive parents dies;

(b) the surviving prospective adoptive parent requests that the court enter the decree; and

(c) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least six months.

(5) Upon request of a surviving pre-existing parent, or a surviving parent for whom adoption of a child has been finalized, the court may enter a final decree of adoption declaring that a child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at the time of the prospective adoptive parent's death.

(6) The court may enter a final decree of adoption declaring that a child is

adopted by both deceased prospective adoptive parents if:

(a) both of the prospective adoptive parents die after the child is placed in the prospective adoptive parents' home; and

(b) it is in the best interests of the child to enter the decree.

(7) Nothing in this section shall be construed to grant any rights to the pre-existing parents of a child to assert any interest in the child during the six-month or one-year periods described in this section.

Amended by Chapter 340, 2012 General Session

78B-6-137. Decree of adoption -- Best interest of child -- Legislative findings.

The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-138. Pre-existing parent's rights and duties dissolved.

(1) A pre-existing parent of an adopted child is released from all parental duties toward and all responsibilities for the adopted child, including residual rights, and has no further rights with regard to that child at the earlier of:

(a) the time the pre-existing parent's parental rights are terminated; or

(b) except as provided in Subsection (2), and subject to Subsection (3), the time the final decree of adoption is entered.

(2) The rights and duties of a pre-existing parent described in Subsection (1) who, at the time the child is adopted, is lawfully married to the person adopting the child are not released or terminated under Subsection (1)(b).

(3) The rights and duties of a pre-existing parent described in Subsection (1) who, at the time the child is adopted, is not lawfully married to the person adopting the child are terminated as provided in Subsection (1)(b).

Amended by Chapter 237, 2010 General Session

78B-6-139. Name and status of adopted child.

When a final decree of adoption is entered under Section 78B-6-137, a child may take the family name of the adoptive parent or parents. After that decree of adoption is entered, the adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-140. Itemization of fees and expenses.

(1) Except as provided in Subsection (4), prior to the date that a final decree of adoption is entered, an affidavit regarding fees and expenses, signed by the prospective adoptive parent or parents and the person or agency placing the child, shall be filed with the court.

(2) The affidavit described in Subsection (1) shall itemize the following items in connection with the adoption:

(a) all legal expenses, maternity expenses, medical or hospital expenses, and living expenses that have been or will be paid to or on behalf of the pre-existing parents of the child, including the source of payment;

(b) fees paid by the prospective adoptive parent or parents in connection with the adoption;

(c) all gifts, property, or other items that have been or will be provided to the pre-existing parents, including the source of the gifts, property, or other items;

(d) all public funds used for any medical or hospital costs in connection with the:

(i) pregnancy;

(ii) delivery of the child; or

(iii) care of the child;

(e) the state of residence of the:

(i) birth mother or the pre-existing parents; and

(ii) prospective adoptive parent or parents;

(f) a description of services provided to the prospective adoptive parents or pre-existing parents in connection with the adoption; and

(g) that Section 76-7-203 has not been violated.

(3) A copy of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within the Department of Human Services.

(4) This section does not apply if the prospective adoptive parent is the legal spouse of a pre-existing parent.

Amended by Chapter 340, 2012 General Session

78B-6-141. Petition, report, and documents sealed -- Exceptions.

(1) A petition for adoption, the written report described in Section 78B-6-135, and any other documents filed in connection with the petition are sealed.

(2) The documents described in Subsection (1) may only be open to inspection as follows:

(a) in accordance with Subsection (3)(a), by a party to the adoption proceeding:

(i) while the proceeding is pending; or

(ii) within six months after the day on which the adoption decree is entered;

(b) subject to Subsection (3)(b), a court enters an order permitting access to the documents by a person who has appealed the denial of that person's motion to intervene;

(c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;

(d) as provided under Section 78B-6-144;

(e) those records shall become public on the one hundredth anniversary of the date the final decree of adoption was entered; or

(f) if the adoptee is an adult at the time the final decree of adoption is entered, the documents described in this section are open to inspection and copying without a court order by the adoptee or a parent who adopted the adoptee, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b).

(3) (a) A person who files a motion to intervene in an adoption proceeding:

(i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and

(ii) may not be granted access to the documents described in Subsection (1), unless the motion to intervene is granted.

(b) An order described in Subsection (2)(b) shall:

(i) prohibit the person described in Subsection (2)(b) from inspecting a document described in Subsection (1) that contains identifying information of the adoptive or prospective adoptive parent; and

(ii) permit the person described in Subsection (3)(b)(i) to review a copy of a document described in Subsection (3)(b)(i) after the identifying information described in Subsection (3)(b)(i) is redacted from the document.

Amended by Chapter 340, 2012 General Session

78B-6-142. Adoption order from foreign country.

(1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.

(2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:

(a) file the order pursuant to Section 78B-6-137; and

(b) file a certificate of birth for the child pursuant to Section 26-2-28.

(3) If a clerk of the court is unable to establish the fact, time, and place of birth from the documentation provided, a person holding a direct, tangible, and legitimate interest as described in Subsection 26-2-22(2)(a) or (b) may petition for a court order establishing the fact, time, and place of a birth pursuant to Subsection 26-2-15(1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-143. Nonidentifying health history of adoptee filed with office -- Limited availability.

(1) Upon finalization of an adoption in this state, the person who proceeded on behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the adoption, shall file a report with the office, in the form established by the office. That report shall include a detailed health history, and a genetic and social history of the adoptee.

(2) The report filed under Subsection (1) may not contain any information

which identifies the adoptee's birth parents or members of their families.

(3) When the report described in Subsection (1) is filed, a duplicate report shall be provided to the adoptive parents.

(4) The report filed with the office under Subsection (1) shall only be available upon request, and upon presentation of positive identification, to the following persons:

(a) the adoptive parents;

(b) in the event of the death of the adoptive parents, the adoptee's legal guardian;

(c) the adoptee;

(d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the parent or guardian of the adoptee's child;

(e) the adoptee's child or descendant;

(f) the adoptee's birth parent; and

(g) the adoptee's adult sibling.

(5) No information which identifies a birth parent or his family may be disclosed under this section.

(6) The actual cost of providing information under this section shall be paid by the person requesting the information.

Amended by Chapter 340, 2012 General Session

78B-6-144. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.

(1) The office shall establish a mutual-consent, voluntary adoption registry.

(a) Adult adoptees and birth parents of adult adoptees, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or birth parent, in the form provided by the office, and transfer that request to the office. The adult adoptee or birth parent is responsible for notifying the office of any change in information contained in the request.

(b) The office may only release identifying information to an adult adoptee or birth parent when it receives requests from both the adoptee and the adoptee's birth parent.

(c) After matching the request of an adult adoptee with that of at least one of the adoptee's birth parents, the office shall notify both the adoptee and the birth parent that the requests have been matched, and disclose the identifying information to those parties. However, if that adult adoptee has a sibling of the same birth parent who is under the age of 18 years, and who was raised in the same family setting as the adult adoptee, the office shall not disclose the requested identifying information to that adult adoptee or the adoptee's birth parent.

(2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or adult sibling, in the form

provided by the office, and transfer that request to the office. The adult adoptee or adult sibling is responsible for notifying the office of any change in information contained in the request.

(b) The office may only release identifying information to an adult adoptee or adult sibling when it receives requests from both the adoptee and the adoptee's adult sibling.

(c) After matching the request of an adult adoptee with that of the adoptee's adult sibling, if the office has been provided with sufficient information to make that match, the office shall notify both the adoptee and the adult sibling that the requests have been matched, and disclose the identifying information to those parties.

(3) Information registered with the bureau under this section is available only to a registered adult adoptee and the adoptee's registered birth parent or registered adult sibling, under the terms of this section.

(4) Information regarding a birth parent who has not registered a request with the bureau may not be disclosed.

(5) The bureau may charge a fee for services provided under this section, limited to the cost of providing those services.

Amended by Chapter 340, 2012 General Session

78B-6-145. Restrictions on disclosure of information -- Violations -- Penalty.

(1) Information maintained or filed with the office under this chapter may not be disclosed except as provided by this chapter, or pursuant to a court order.

(2) Any person who discloses information obtained from the office's voluntary adoption registry in violation of this part, or knowingly allows that information to be disclosed in violation of this chapter is guilty of a class A misdemeanor.

Amended by Chapter 340, 2012 General Session

78B-6-146. Postadoption contact agreements.

(1) As used in this section:

(a) "Postadoption contact agreement" means a document, agreed upon prior to the finalization of an adoption of a child in the custody of the division, that outlines the relationship between an adoptive parent, birth parent, or other birth relative, and an adopted child after the finalization of adoption.

(b) "Other birth relative" means a grandparent, stepparent, sibling, stepsibling, aunt, or uncle of the prospective adoptive child.

(2) (a) Notwithstanding any other provision in this chapter, if a child in the custody of the division is placed for adoption, the prospective adoptive parent and birth parent, or other birth relative, may enter into a postadoption contact agreement as provided in this section.

(b) A birth parent is not required to be a party to a postadoption contact agreement in order to permit an open adoption agreement between a prospective adoptive parent and another birth relative of the child.

(3) In order to be legally enforceable, a postadoption contact agreement shall

be:

(a) approved by the court before the finalization of the adoption, with the court making a specific finding that the agreement is in the best interest of the child;

(b) signed by each party claiming a right or obligation in the agreement; and

(c) if the adopted child is 12 years old or older, approved by the child.

(4) A postadoption contact agreement shall:

(a) describe:

(i) visits, if any, that shall take place between the birth parent, other birth relative, adoptive parent, and adopted child;

(ii) the degree of supervision, if any, that shall be required during a visit between a birth parent, other birth relative, and adopted child;

(iii) the information, if any, that shall be provided to a birth parent, or other birth relative, about the adopted child and how often that information shall be provided;

(iv) the grounds, if any, on which the adoptive parent may:

(A) decline to permit visits, described in Subsection (4)(a)(i), between the birth parent, or other birth relative, and adopted child; or

(B) cease providing the information described in Subsection (4)(a)(iii) to the birth parent or other birth relative; and

(b) state that following the adoption, the court shall presume that the adoptive parent's judgment about the best interest of the child is correct in any action seeking to enforce, modify, or terminate the agreement.

(5) A postadoption contact agreement may not limit the adoptive parent's ability to move out of state.

(6) A postadoption contact agreement may only be modified with the consent of the adoptive parent.

(7) In an action seeking enforcement of a postadoption contact agreement:

(a) an adoptive parent's judgment about the best interest of the child is entitled to a presumption of correctness;

(b) if the party seeking to enforce the postadoption contact agreement successfully rebuts the presumption described in Subsection (7)(a), the court shall consider whether:

(i) the parties performed the duties outlined in the open adoption agreement in good faith;

(ii) there is a reasonable alternative that fulfills the spirit of the open adoption agreement without ordering mandatory compliance with the open adoption agreement; and

(iii) enforcement of the open adoption agreement is in the best interest of the adopted child; and

(c) the court shall order the parties to attend mediation, if the presumption in Subsection (7)(a) is successfully rebutted and mediation is in the child's best interest.

(8) An open adoption agreement that has been found not to be in the best interest of the adopted child shall not be enforced.

(9) Violation of an open adoption agreement is not grounds:

(a) to set aside an adoption; or

(b) for an award of money damages.

(10) Nothing in this section shall be construed to mean that an open adoption

agreement is required before an adoption may be finalized.

(11) Refusal or failure to agree to a postadoption contact agreement is not admissible in any adoption proceeding.

(12) The court that approves a postadoption contact agreement retains jurisdiction over modification, termination, and enforcement of an approved postadoption contact agreement.

Enacted by Chapter 438, 2013 General Session

78B-6-201. Title.

This part is known as the "Alternative Dispute Resolution Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-202. Definitions.

As used in this part:

(1) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by the Judicial Council under this part.

(2) "ADR organization" means an organization which provides training for ADR providers or offers other ADR services.

(3) "ADR provider" means a neutral person who conducts an ADR procedure. An arbitrator, mediator, and early neutral evaluator are ADR providers. An ADR provider may be an employee of the court or an independent contractor.

(4) "Arbitration" means a private hearing before a neutral or panel of neutrals who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented pursuant to Section 78B-6-206.

(5) "Award" as used in connection with arbitration includes monetary or equitable relief and may include damages, interest, costs, and attorney fees.

(6) "Civil action" means an action in which a party seeks monetary or equitable relief at common law or pursuant to statute.

(7) "Early neutral evaluation" means a confidential meeting with a neutral expert to identify the issues in a dispute, explore settlement, and assess the merits of the claims.

(8) "Mediation" means a private forum in which one or more impartial persons facilitate communication between parties to a civil action to promote a mutually acceptable resolution or settlement.

(9) "Summary jury trial" means a summary presentation of a case to a jury which results in a nonbinding verdict.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-203. Purpose and findings.

(1) The purpose of this part is to offer an alternative or supplement to the formal processes associated with a court trial and to promote the efficient and effective operation of the courts of this state by authorizing and encouraging the use

of alternative methods of dispute resolution to secure the just, speedy, and inexpensive determination of civil actions filed in the courts of this state.

(2) The Legislature finds that:

(a) the use of alternative methods of dispute resolution authorized by this part will secure the purposes of Article I, Section 11, Utah Constitution, by providing supplemental or complementary means for the just, speedy, and inexpensive resolution of disputes;

(b) preservation of the confidentiality of ADR procedures will significantly aid the successful resolution of civil actions in a just, speedy, and inexpensive manner;

(c) ADR procedures will reduce the need for judicial resources and the time and expense of the parties;

(d) mediation has, in pilot programs, resulted in the just and equitable settlement of petitions for the protection of children under Section 78A-6-304 and petitions for the terminations of parental rights under Section 78A-6-505; and

(e) the purpose of this part will be promoted by authorizing the Judicial Council to establish rules to promote the use of ADR procedures by the courts of this state as an alternative or supplement to court trial.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-204. Dispute Resolution Programs -- Director -- Duties -- Report.

(1) Within the Administrative Office of the Courts, there shall be a director of Dispute Resolution Programs, appointed by the state court administrator.

(2) The director shall be an employee of the Administrative Office of the Courts and shall be responsible for the administration of all court-annexed Dispute Resolution Programs. The director shall have duties, powers, and responsibilities as the Judicial Council may determine. The qualifications for employment of the director shall be based on training and experience in the management, principles, and purposes of alternative dispute resolution procedures.

(3) In order to implement the purposes of this part, the Administrative Office of the Courts may employ or contract with ADR providers or ADR organizations on a case-by-case basis, on a service basis, or on a program basis. ADR providers and organizations shall be subject to the rules and fees set by the Judicial Council. The Administrative Office of the Courts shall establish programs for training ADR providers and orienting attorneys and their clients to ADR programs and procedures.

(4) An ADR provider is immune from all liability when conducting proceedings under the rules of the Judicial Council and the provisions of this part, except for wrongful disclosure of confidential information, to the same extent as a judge of the courts in this state.

(5) (a) The director shall report annually to the Supreme Court, the Judicial Council, the governor, and the Utah State Bar on the operation of the Dispute Resolution Programs.

(b) The director shall provide the report to the Judiciary Interim Committee, if requested by the committee.

(c) Copies of the report shall be available to the public at the Administrative Office of the Courts.

(d) The report shall include:

(i) identification of participating judicial districts and the methods of alternative dispute resolution that are available in those districts;

(ii) the number and types of disputes received;

(iii) the methods of alternative dispute resolution to which the disputes were referred;

(iv) the course of the referral;

(v) the status of cases referred to alternative dispute resolution or the disposition of these disputes; and

(vi) any problems encountered in the administration of the program and the recommendations of the director as to the continuation or modification of any program.

(e) Nothing may be included in a report which would impair the privacy or confidentiality of any specific ADR proceeding.

Amended by Chapter 51, 2011 General Session

78B-6-205. Judicial Council rules for ADR procedures.

(1) To promote the use of ADR procedures, the Judicial Council may by rule establish experimental and permanent ADR programs administered by the Administrative Office of the Courts under the supervision of the director of Dispute Resolution Programs.

(2) The rules of the Judicial Council shall be based upon the purposes and provisions of this part. Any procedural and evidentiary rules adopted by the Supreme Court may not impinge on the constitutional rights of any parties.

(3) The rules of the Judicial Council shall include provisions:

(a) to orient parties and their counsel to the ADR program, ADR procedures, and the rules of the Judicial Council;

(b) to identify types of civil actions that qualify for ADR procedures;

(c) to refer to ADR procedures all or particular issues within a civil action;

(d) to protect persons not parties to the civil action whose rights may be affected in the resolution of the dispute;

(e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to participate in an optional ADR procedure;

(f) to exempt any case from the ADR program in which the objectives of ADR would not be realized;

(g) to create timetables to ensure that the ADR procedure is instituted and completed without undue delay or expense;

(h) to establish the qualifications of ADR providers for each form of ADR procedure including that formal education in any particular field may not, by itself, be either a prerequisite or sufficient qualification to serve as an ADR provider under the program authorized by this part;

(i) to govern the conduct of each type of ADR procedure, including the site at which the procedure is conducted;

(j) to establish the means for the selection of an ADR provider for each form of ADR procedure;

(k) to determine the powers, duties, and responsibilities of the ADR provider for each form of ADR procedure;

(l) to establish a code of ethics applicable to ADR providers with means for its enforcement;

(m) to protect and preserve the privacy and confidentiality of ADR procedures;

(n) to protect and preserve the privacy rights of the persons attending the ADR procedures;

(o) to permit waiver of all or part of fees assessed for referral of a case to the ADR program on a showing of impecuniosity or other compelling reason;

(p) to authorize imposition of sanctions for failure of counsel or parties to participate in good faith in the ADR procedure assigned;

(q) to assess the fees to cover the cost of compensation for the services of the ADR provider and reimbursement for the provider's allowable, out-of-pocket expenses and disbursements; and

(r) to allow vacation of an award by a court as provided in Section 78B-11-124.

(4) The Judicial Council may, from time to time, limit the application of its ADR rules to particular judicial districts.

Amended by Chapter 367, 2011 General Session

78B-6-206. Minimum procedures for arbitration.

(1) An award in an arbitration proceeding shall be in writing and, at the discretion of the arbitrator or panel of arbitrators, may state the reasons or otherwise explain the nature or amount of the award.

(2) The award shall be final and enforceable as any other judgment in a civil action, unless:

(a) within 30 days after the filing of the award with the clerk of the court any party files with the clerk of court a demand for a trial de novo upon which the case shall be returned to the trial calendar; or

(b) any party files with the arbitrator or panel of arbitrators and serves a copy on all other parties a written request to modify the award on the grounds:

(i) there is an evident miscalculation of figures or description of persons or property referred to in the award;

(ii) the award does not dispose of all the issues presented to the arbitrator or panel of arbitrators for resolution; or

(iii) the award purports to resolve issues not submitted for resolution in the arbitration process.

(c) The period for filing a demand for trial de novo is tolled until the arbitrator or panel of arbitrators have acted on the request to modify the award, which must be completed within 30 days of the filing.

(3) The parties to an arbitration procedure may stipulate that:

(a) an award need not be filed with the court, except in those cases where the rights of third parties may be affected by the provisions of the award; and

(b) the case is dismissed in which the award was made.

(4) (a) At any time the parties may enter into a written agreement for referral of the case or of issues in the case to arbitration pursuant to Title 78B, Chapter 11, Utah

Uniform Arbitration Act, or the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq., as the parties shall specify.

(b) The court may dismiss the case, or if less than all the issues are referred to arbitration, stay the case for a reasonable period for the parties to complete a private arbitration proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-207. Minimum procedures for mediation.

(1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.

(2) (a) Unless all parties and the neutral or neutrals agree only parties, their representatives, and the neutral may attend the mediation sessions.

(b) If the mediation session is pursuant to a referral under Subsection 78A-6-108(9), the ADR provider or ADR organization shall notify all parties to the proceeding and any person designated by a party. The ADR provider may notify any person whose rights may be affected by the mediated agreement or who may be able to contribute to the agreement. A party may request notice be provided to a person who is not a party.

(3) (a) Except as provided in Subsection (3)(b), any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any agreement to dismiss shall not be filed with the court.

(b) With regard to mediation affecting any petition filed under Section 78A-6-304 or 78A-6-505:

(i) all settlement agreements and stipulations of the parties shall be filed with the court;

(ii) all timelines, requirements, and procedures described in Title 78A, Chapter 6, Parts 3 and 5, and in Title 62A, Chapter 4a, shall be complied with; and

(iii) the parties to the mediation may not agree to a result that could not have been ordered by the court in accordance with the procedures and requirements of Title 78A, Chapter 6, Parts 3 and 5, and Title 62A, Chapter 4a.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-208. Confidentiality.

(1) ADR proceedings shall be conducted in a manner that encourages informal and confidential exchange among the persons present to facilitate resolution of the dispute or a part of the dispute. ADR proceedings shall be closed unless the parties agree that the proceedings be open. ADR proceedings may not be recorded.

(2) No evidence concerning the fact, conduct, or result of an ADR proceeding may be subject to discovery or admissible at any subsequent trial of the same case or same issues between the same parties.

(3) No party to the case may introduce as evidence information obtained

during an ADR proceeding unless the information was discovered from a source independent of the ADR proceeding.

(4) Unless all parties and the neutral agree, no person attending an ADR proceeding, including the ADR provider or ADR organization, may disclose or be required to disclose any information obtained in the course of an ADR proceeding, including any memoranda, notes, records, or work product.

(5) Except as provided, an ADR provider or ADR organization may not disclose or discuss any information about any ADR proceeding to anyone outside the proceeding, including the judge or judges to whom the case may be assigned. An ADR provider or an ADR organization may communicate information about an ADR proceeding with the director for the purposes of training, program management, or program evaluation and when consulting with a peer. In making those communications, the ADR provider or ADR organization shall render anonymous all identifying information.

(6) Nothing in this section limits or affects the responsibility to report child abuse or neglect in accordance with Section 62A-4a-403.

(7) Records of ADR proceedings under this chapter or under Title 78B, Chapter 11, Utah Uniform Arbitration Act, may not be subject to Title 63G, Chapter 2, Government Records Access and Management Act, except settlement agreements filed with the court after conclusion of an ADR proceeding or awards filed with the court after the period for filing a demand for trial de novo has expired.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-209. Dispute Resolution Restricted Account -- Appropriation.

There is created a restricted account within the General Fund known as the "Dispute Resolution Account." Three dollars of the fees established in Subsections 78A-2-301(1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited in the restricted account. The Legislature shall annually appropriate money from the Dispute Resolution Account to the Administrative Office of the Courts to implement the purposes of the Alternative Dispute Resolution Act.

Amended by Chapter 22, 2011 General Session

78B-6-301. Acts and omissions constituting contempt.

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the course of a trial or other judicial proceeding;

(2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

(3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;

(4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

(5) disobedience of any lawful judgment, order or process of the court;
(6) acting as an officer, attorney or counselor, of a court without authority;
(7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;
(8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;
(9) any other unlawful interference with the process or proceedings of a court;
(10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;
(11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; and
(12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-302. Contempt in immediate presence of court -- Summary action -- Outside presence of court -- procedure.

(1) When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily. An order shall be made, reciting the facts occurring in the immediate view and presence of the court. The order shall state that the person proceeded against is guilty of a contempt and shall be punished as prescribed in Section 78B-6-310.
(2) When the contempt is not committed in the immediate view and presence of the court or judge, an affidavit or statement of the facts by a judicial officer shall be presented to the court or judge of the facts constituting the contempt.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-303. Warrant of attachment or commitment order to show cause.

If the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer. If there is no previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted. A warrant of commitment may not be issued without a previous attachment to answer, or a notice or order to show cause.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-304. Bail.

Whenever a warrant of attachment is issued pursuant to this chapter, the court

or judge must direct, by an indorsement on the warrant, that the person charged may be allowed to post bail for the person's appearance, in an amount to be prescribed in the indorsement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-305. Duty of sheriff -- Excuse for nonappearance -- Unnecessary restraint forbidden.

(1) Upon executing the warrant of attachment, the sheriff shall keep the person in custody and bring the person before the court or judge until an order is made in the premises, unless the person arrested posts bail as provided in Section 78B-6-306.

(2) Whenever by the provisions of this chapter an officer is required to keep in custody a person arrested on a warrant of attachment and to bring the person before a court or judge, the inability from illness or otherwise of the person to attend is a sufficient excuse for not bringing the person up; and the officer must not confine a person arrested upon the warrant in a prison or otherwise restrain the person of personal liberty, except so far as may be necessary to secure the person's personal attendance.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-306. Bail bond -- Form.

(1) When a direction to allow the person arrested to post bail is contained in the warrant of attachment, the person shall be released if bond is posted and the person executes a written promise to appear on the return of the warrant, and abide by the order of the court or judge.

(2) Any bail posted is subject to the provisions of Section 78B-6-311.

Amended by Chapter 268, 2014 General Session

78B-6-307. Officer's return.

The officer shall return the warrant of arrest, and the undertaking, if any, received from the person arrested, by the return day specified therein.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-308. Procedure when party charged fails to appear.

When the warrant of arrest has been served, if the person arrested does not appear on the specified day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted or both. If the undertaking is prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-309. Hearing.

When the person arrested has been brought up or has appeared, the court shall proceed to investigate the charge, and hear any answer which the person arrested may make. The court may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time, if necessary.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-310. Contempt -- Action by court.

The court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding $1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed $500 or by incarceration for five days or both.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-311. Damages to party aggrieved.

(1) If an actual loss or injury to a party in an action or special proceeding is caused by the contempt, the court, in lieu of or in addition to the fine or imprisonment imposed for the contempt, may order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify and satisfy the aggrieved party's costs and expenses. The court may order that any bail posted by the person proceeded against be used to satisfy all or part of the money ordered to be paid to the aggrieved party. The order and the acceptance of money under it is a bar to an action by the aggrieved party for the loss and injury.

(2) A judgment creditor may request that the court pay bail posted by a judgment debtor to the judgment creditor if:

(a) the judgment debtor owes the judgment creditor funds pursuant to a court-ordered judgment;

(b) the judgment creditor provides the court with a copy of the valid judgment; and

(c) bail was posted in cash, or by credit or debit card.

(3) Upon receipt of a request by a judgment creditor, the court shall require the judgment debtor to provide either proof of payment or good cause why the court should not order the forfeiture of bail to then be paid to the judgment creditor. The court shall find that good cause exists if the judgment debtor provides admissible evidence that the bail was paid by a third party.

(4) The court may, in its discretion, order all or a portion of the funds deposited with the court as bail to be paid to the judgment creditor towards the amount of the judgment. If the amount paid to the court exceeds the amount of the judgment, the court shall refund the excess to the judgment debtor.

(5) Within seven days of the receipt of funds, the judgment creditor shall provide to the judgment debtor an accounting of amounts received and the balance still due, if any.

Amended by Chapter 268, 2014 General Session

78B-6-312. Imprisonment to compel performance.

When the contempt consists of the omission to perform an act enjoined by law, which is yet in the power of the person to perform, the person may be imprisoned until the act is performed, or until released by the court. The act shall be specified in the warrant of commitment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-313. Contempt of process of nonjudicial officer -- Procedure.

(1) If a person, officer, referee, arbitrator, board, or committee with the authority to compel the attendance of witnesses or the production of documents issues a subpoena and the person to whom the subpoena is issued refuses to appear or produce the documents ordered, the person shall be considered in contempt.

(2) The person, officer, referee, arbitrator, board, or committee may report the person to whom the subpoena is issued to the judge of the district court. The court may then issue a warrant of attachment or order to show cause to compel the person's appearance.

(3) When a person charged has been brought up or has appeared, the person's contempt may be purged in the same manner as other contempts mentioned in this part.

Enacted by Chapter 3, 2008 General Session

78B-6-314. Re-entry after eviction from real property.

(1) A person who is ordered to vacate real property by a court of competent jurisdiction, who, not having a right so to do, refuses to vacate, re-enters, or takes possession of, the real property, is guilty of a contempt of the court issuing the judgment.

(2) Upon a conviction for the contempt, the court shall immediately issue an alias process, directed to the proper officer, requiring the person to restore possession of the property to the party entitled to possession under the original judgment or process.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-315. Noncompliance with child support order.

(1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant to an action under Title 63G, Chapter 4, Administrative Procedures Act, makes an order requiring a parent to furnish support or necessary food, clothing, shelter, medical care, or other remedial care for his child, and the parent fails to do so, proof of noncompliance shall be prima facie evidence of contempt of court.

(2) Proof of noncompliance may be demonstrated by showing that:

(a) the order was made, and filed with the district court; and

(b) the parent knew of the order because:

(i) the order was mailed to the parent at his last-known address as shown on the court records;

(ii) the parent was present in court at the time the order was pronounced;

(iii) the parent entered into a written stipulation and the parent or counsel for the parent was sent a copy of the order;

(iv) counsel was present in court and entered into a stipulation which was accepted and the order based upon the stipulation was then sent to counsel for the parent; or

(v) the parent was properly served and failed to answer.

(3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor under the child support order has the burden of proving inability to comply with the child support order.

(4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon a finding that:

(a) an obligor has:

(i) made no payment for 60 days on a current obligation of support as set forth in an administrative or court order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the support obligation in accordance with the order; or

(ii) made no payment for 60 days on an arrearage obligation of support as set forth in a payment schedule, written agreement with the Office of Recovery Services, or an administrative or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the arrearage obligation in accordance with the payment schedule, agreement, or order; and

(iii) not obtained a judicial order staying enforcement of the support or arrearage obligation for which the obligor would be otherwise delinquent;

(b) a custodial parent has:

(i) violated a parent-time order by denying contact for 60 days between a noncustodial parent and a child and, thereafter, has failed to make a good faith effort under the circumstances to comply with a parent-time order; and

(ii) not obtained a judicial order staying enforcement of the parent-time order; or

(c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a subpoena or order relating to a paternity or child support proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-316. Compensatory service for violation of parent-time order or failure to pay child support.

(1) If a court finds by a preponderance of the evidence that a parent has refused to comply with the minimum amount of parent-time ordered in a decree of divorce, the court shall order the parent to:

(a) perform a minimum of 10 hours of compensatory service; and

(b) participate in workshops, classes, or individual counseling to educate the

parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.

(2) If a custodial parent is ordered to perform compensatory service or undergo court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted parent-time by the court to provide child care during the time the custodial parent is complying with compensatory service or education in order to recompense him for parent-time wrongfully denied by the custodial parent under the divorce decree.

(3) If a noncustodial parent is ordered to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the noncustodial parent's parent-time with the child.

(4) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.

(5) If a court finds by a preponderance of the evidence that an obligor, as defined in Section 78B-12-102, has refused to pay child support as ordered by a court in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court shall order the obligor to:

(a) perform a minimum of 10 hours of compensatory service; and

(b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order and providing the children with a regular and stable source of support.

(6) The obligor is responsible for the expenses of workshops, classes, and individual counseling ordered by the court.

(7) If a court orders an obligor to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the obligor's parent-time with the child.

(8) The sanctions that the court shall impose under this section do not prevent the court from imposing other sanctions or prevent any person from bringing a cause of action allowed under state or federal law.

(9) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-401. Jurisdiction of district courts -- Form -- Effect.

(1) Each district court has the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction. An action or proceeding may not be open to objection on the ground that a declaratory judgment or decree is prayed for.

(2) The declaration may be either affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-402. Court's general powers.

The provisions of Sections 78B-6-408, 78B-6-409, and 78B-6-410 do not limit or restrict the exercise of the general powers conferred in Section 78B-6-401 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-403. Parties.

(1) When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and a declaration may not prejudice the rights of persons not parties to the proceeding.

(2) In any proceeding which involves the validity of a municipal or county ordinance or franchise, the municipality or county shall be made a party, and shall be entitled to be heard.

(3) If a statute or state franchise or permit is alleged to be invalid, the attorney general shall be served with a copy of the proceeding and be entitled to be heard.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-404. Discretion to deny declaratory relief.

The court may refuse to render or enter a declaratory judgment or decree where a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-405. Appeals and reviews.

All orders, judgments, and decrees under this part may be reviewed in the same manner as other orders, judgments, and decrees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-406. Supplemental relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application for further relief shall be by petition to a court having jurisdiction to grant the relief. If the application is considered sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be immediately granted.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-407. Trial of issues of fact.

When a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried in the court in which the proceeding is pending and determined in the same manner as issues of fact are tried and determined in other

civil actions in the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-408. Rights, status, legal relations under instruments, or statutes may be determined.

A person with an interest in a deed, will, or written contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may request the district court to determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-409. Contracts.

A contract may be construed before or after there has been a breach.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-410. Suit by fiduciary or representative.

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may petition the court for a declaratory judgment:

(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-411. Costs.

In any proceeding under this part the court may make an award of costs it considers equitable and just.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-412. Chapter to be liberally construed.

This chapter is to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-501. Eminent domain -- Uses for which right may be exercised.

Subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:

(1) all public uses authorized by the federal government;

(2) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;

(3) (a) public buildings and grounds for the use of any county, city, town, or board of education;

(b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to or from a development, for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;

(c) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;

(d) bicycle paths and sidewalks adjacent to paved roads;

(e) roads, byroads, streets, and alleys for public vehicular use, including for access to a development, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and

(f) all other public uses for the benefit of any county, city, or town, or its inhabitants;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;

(5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of minerals in solution;

(6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

(b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution;

(c) mill dams;

(d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

(e) solar evaporation ponds and other facilities for the recovery of minerals in solution; and

(f) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the

reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;

(7) byroads leading from a highway to:

(a) a residence; or

(b) a farm;

(8) telecommunications, electric light and electric power lines, sites for electric light and power plants, or sites for the transmission of broadcast signals from a station licensed by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that provides emergency broadcast services;

(9) sewage service for:

(a) a city, a town, or any settlement of not fewer than 10 families;

(b) a public building belonging to the state; or

(c) a college or university;

(10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;

(11) cemeteries and public parks, except for a park whose primary use is:

(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use;

(12) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.

Amended by Chapter 59, 2014 General Session

78B-6-502. Estates and rights that may be taken.

The following estates and rights in lands are subject to being taken for public use:

(1) a fee simple, when taken for:

(a) public buildings or grounds;

(b) permanent buildings;

(c) reservoirs and dams, and permanent flooding occasioned by them;

(d) any permanent flood control structure affixed to the land;

(e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores; and

(f) solar evaporation ponds and other facilities for the recovery of minerals in solution, except when the surface ground is underlaid with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a perpetual easement may be taken over the surface ground over the deposits;

(2) an easement, when taken for any other use; and

(3) the right of entry upon and occupation of lands, with the right to take from those lands earth, gravel, stones, trees, and timber as necessary for a public use.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-503. Private property which may be taken.

Private property which may be taken under this part includes:

(1) all real property belonging to any person;

(2) lands belonging to the state, or to any county, city or incorporated town, not appropriated to some public use;

(3) property appropriated to public use; provided that the property may not be taken unless for a more necessary public use than that to which it has already been appropriated;

(4) franchises for toll roads, toll bridges, ferries, and all other franchises; provided that the franchises may not be taken unless for free highways, railroads, or other more necessary public use;

(5) all rights of way for any and all purposes mentioned in Section 78B-6-501 hereof, and any and all structures and improvements on the property, and the lands held or used in connection with the property, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure; they shall also be subject to a limited use in common with the owners, when necessary; but uses of crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury; and

(6) all classes of private property not enumerated if the taking is authorized by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-503.5. Other property which may be taken -- State as plaintiff.

(1) Subject to Subsections (2) and (3), property which may be taken under this part includes property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.

(2) The state shall be the plaintiff described in Section 78B-6-507 in an action to condemn property described in Subsection (1).

(3) The following do not apply to an action authorized under Subsection (1):

(a) Section 78B-6-505;

(b) Section 78B-6-520;

(c) Section 78B-6-521; and

(d) Title 57, Chapter 12, Relocation Assistance.

Enacted by Chapter 250, 2010 General Session

78B-6-504. Conditions precedent to taking.

(1) Before property can be taken it must appear that:

(a) the use to which it is to be applied is a use authorized by law;

(b) the taking is necessary for the use;

(c) construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this part; and

(d) if already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.

(2) (a) As used in this section, "governing body" means:

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

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

(b) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.

(c) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.

(d) The requirement under Subsection (2)(c) to provide notice to a property owner is satisfied by the governing body mailing the written notice to the property owner:

(i) at the owner's address as shown on the records of the county assessor's office; and

(ii) at least 10 business days before the public meeting.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-505. Negotiation and disclosure required before filing an eminent domain action.

(1) A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the political subdivision takes a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(b) except as provided in Subsection (4), as early in the negotiation process described in Subsection (1)(a) as practicable, but no later than 14 days before the day

on which a final vote is taken to approve the filing of an eminent domain action:

(i) provide the property owner a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation; and

(ii) provide the property owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of political subdivision] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of political subdivision] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of political subdivision] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."

(2) Except as provided in Subsection (4), the entity involved in the acquisition of property may not bring a legal action to acquire the property under this chapter until 30 days after the day on which the disclosure and materials required in Subsection (1)(b)(ii) are provided to the property owner.

(3) A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before filing an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(b) except as provided in Subsection (4), as early in the negotiation process described in Subsection (3)(a) as practicable, but no later than 30 days before the day on which the person files an eminent domain action:

(i) provide the property owner a complete printed copy of the materials

provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation; and

(ii) provide the property owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of entity] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of entity] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."

(4) The court may, upon a showing of exigent circumstances and for good cause, shorten the 14-day period described in Subsection (1)(b) or the 30-day period described in Subsection (2) or (3)(b).

Amended by Chapter 59, 2014 General Session

78B-6-506. Right of entry for survey and location.

(1) If land is required for public use, the person or the person's agent in charge of the use may survey and locate the property. It must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter.

(2) (a) The person or the person's agent in charge of the public use may, at reasonable times and upon reasonable notice, enter upon the land and make examinations, surveys, and maps of the land.

(b) Entry upon land as authorized under Subsection (2)(a) does not constitute a cause of action in favor of the owners of the lands, except for actual damage to the

land and improvements on the land caused by the entry and which is not repaired on or before the date the examinations and surveys are completed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-507. Complaint -- Contents.

(1) The complaint shall contain:

(a) the name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(b) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;

(c) a statement of the right of the plaintiff;

(d) if a right of way is sought, its location, general route, beginning and ending, and be accompanied by a map of the proposed right of way, as it is involved in the action or proceeding;

(e) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:

(i) the permission of the governor with the concurrence of the Legislature authorizing:

(A) use of the site for the subject activity; and

(B) use of the proposed route for the subject activity; and

(ii) the proposed route as required by Subsection (1)(d); and

(f) a description of each piece of land sought to be taken, and whether it includes the whole or only part of an entire parcel or tract.

(2) All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-508. Who may appear and defend.

All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking, though not named, including shareholders in a mutual stock water company in a proceeding involving the taking of the company or property belonging to the company, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in the same manner as if named in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-509. Powers of court or judge -- Settlement offer -- Litigation expenses.

(1) As used in this section, "litigation expenses" means costs necessary to prepare for and conduct a trial, including:

(a) court costs;

(b) expert witness fees;

(c) appraisal fees; and

(d) reasonable attorney fees.

(2) The court shall have the power to:

(a) hear and determine all adverse or conflicting claims to the property sought to be condemned, and the damages; and

(b) determine the respective rights of different parties seeking condemnation of the same property.

(3) (a) A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement offer for purposes of this Subsection (3) at any time:

(i) following the close of discovery as ordered by the court, but no later than 60 days before the first day of trial; or

(ii) if no order setting the close of discovery exists:

(A) more than nine months from the day that the complaint is filed; and

(B) no later than 60 days before the first day of trial.

(b) Subject to Subsection (3)(c), an offer under Subsection (3)(a) shall:

(i) be in writing;

(ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each defendant to whom the offer is addressed;

(iii) be an offer made:

(A) to the defendant; or

(B) if more than one defendant, jointly to all defendants who have appeared in the case and have not been dismissed;

(iv) state that the offer is being made under Subsection (3)(a); and

(v) specify the amount, less interest and litigation expenses, that the plaintiff is willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.

(c) An offer described in Subsection (3)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.

(d) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (3)(a) shall expire and be deemed rejected 45 days after service.

(ii) An offer that expires or is rejected under Subsection (3)(d)(i):

(A) is not admissible in evidence; and

(B) may not be referred to at trial.

(4) (a) A defendant who receives an offer under Subsection (3)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.

(b) If there is more than one defendant, defendants may accept the offer by serving a joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.

(c) Any party may file with the court an offer made under Subsection (3)(a) together with its acceptance made under Subsection (4)(b).

(d) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:

(i) the amount of total just compensation agreed to in the offer accepted as

described in Subsection (4)(a); and

(ii) any interest due as provided by law.

(e) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.

(5) (a) A defendant described in Subsection 78B-6-507(1)(b), or if there is more than one defendant that has appeared in the case and has not been dismissed, then all defendants jointly, may make an offer under this Subsection (5):

(i) within 30 days after they receive an offer from the plaintiff under Subsection (3)(a); or

(ii) if the plaintiff does not make an offer under Subsection (3)(a), any time following close of discovery as ordered by the court, but not later than 45 days before the first day of trial.

(b) An offer described in Subsection (5)(a) shall:

(i) be in writing;

(ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;

(iii) (A) be made on behalf of the defendant; or

(B) if there are multiple defendants, the offer shall be made by and on behalf of all defendants jointly who have appeared in the action and have not been dismissed;

(iv) state that the offer is being made under Subsection (5)(a); and

(v) specify the amount, less interest and litigation expenses, that the defendant or defendants jointly are willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.

(c) An offer described in Subsection (5)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.

(d) An offer of settlement made by less than all defendants that have appeared in the case and have not been dismissed:

(i) is not an offer under Subsection (5)(a); and

(ii) may not be a basis for awarding litigation expenses under Subsection (7).

(e) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (5)(a) shall expire and be deemed rejected 21 days after service.

(ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in evidence and may not be referred to at trial.

(6) (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.

(b) Any party may file with the court an offer made under Subsection (5)(a) together with its acceptance made under Subsection (6)(a).

(c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:

(i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (6)(a); and

(ii) any interest due as provided by law.

(d) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.

(7) (a) Subject to Subsection (7)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is greater than the amount of total just compensation specified in the last settlement offer made by a defendant or defendants under Subsection (5)(a), the court shall award the defendant or defendants litigation expenses not to exceed 1/3 of the amount by which the award of just compensation exceeds the amount offered in the last settlement offer under Subsection (5)(a).

(b) An award under Subsection (7)(a) may not exceed:

(i) if there is one defendant in the case, $50,000; or

(ii) if there are multiple defendants in the case, $100,000 total.

(c) The court shall include any amounts awarded under Subsection (7)(a) in the judgment awarding compensation.

(8) (a) Subject to Subsection (8)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is less than the amount of total just compensation specified in the last settlement offer made by a plaintiff under Subsection (3)(a), the court shall award the plaintiff litigation expenses not to exceed 1/3 of the amount by which the last offer of settlement made under Subsection (3)(a) exceeds the total just compensation awarded.

(b) An award under Subsection (8)(a) may not exceed $50,000.

(c) The court shall reduce the judgment awarding just compensation by the amount of litigation expenses awarded to the plaintiff under Subsection (8)(a).

(9) If the total just compensation awarded to a defendant, less interest or litigation expenses, is between an offer made by a plaintiff under Subsection (3)(a) and an offer made by the defendant under Subsection (5)(a), the court may not award litigation expenses to either plaintiff or a defendant.

(10) (a) If a plaintiff does not make an offer under Subsection (3)(a), the court may not award:

(i) the plaintiff litigation expenses; or

(ii) the defendant litigation expenses more than the defendant's last offer under Subsection (5)(a), if the defendant made an offer under Subsection (5)(a).

(b) If a defendant does not make an offer under Subsection (5)(a), the court may not award:

(i) the defendant litigation expenses; or

(ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection (3)(a), if the plaintiff made an offer under Subsection (3)(a).

(11) A claim for attorney fees under this section must be supported by an hourly billing statement.

(12) Subsections (3) through (10) do not apply to an action filed before July 1, 2010.

Amended by Chapter 26, 2010 General Session

78B-6-510. Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.

(1) (a) At any time after the commencement of suit, and after giving notice to the defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion with the court requesting an order permitting the plaintiff to:

(i) occupy the premises sought to be condemned pending the action, including appeal; and

(ii) to do whatever work on the premises that is required.

(b) Except as ordered by the court for good cause shown, a defendant may not be required to reply to a motion for immediate occupancy before expiration of the time to answer the complaint.

(2) The court shall:

(a) take proof by affidavit or otherwise of:

(i) the value of the premises sought to be condemned;

(ii) the damages that will accrue from the condemnation; and

(iii) the reasons for requiring a speedy occupation; and

(b) grant or refuse the motion according to the equity of the case and the relative damages that may accrue to the parties.

(3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff, as a condition precedent to occupancy, file with the clerk of the court a sum equal to the condemning authority's appraised valuation of the property sought to be condemned.

(b) That amount shall be for the purposes of the motion only and is not admissible in evidence on final hearing.

(4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the plaintiff.

(b) The court may issue orders governing encumbrances, liens, rents, assessments, insurance, and other charges, if any, as required.

(5) (a) The rights of just compensation for the land taken as authorized by this section or damaged as a result of that taking vests in the parties entitled to it.

(b) That compensation shall be ascertained and awarded as provided in Section 78B-6-511.

(c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession of the property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the date of judgment.

(ii) The court may not award interest on the amount of the judgment that was paid into court.

(6) (a) Upon the application of the parties in interest, the court shall order that the money deposited in the court be paid before judgment as an advance on the just compensation to be awarded in the proceeding.

(b) This advance payment to a defendant shall be considered to be an abandonment by the defendant of all defenses except a claim for greater compensation.

(c) If the compensation finally awarded exceeds the advance, the court shall enter judgment against the plaintiff for the amount of the deficiency.

(d) If the advance received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess.

(7) Arbitration of a dispute under Section 13-43-204 or 78B-6-522 is not a bar or cause to stay the action for occupancy of premises authorized by this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-511. Compensation and damages -- How assessed.

The court, jury, or referee shall hear any legal evidence offered by any of the parties to the proceedings, and determine and assess:

(1) (a) the value of the property sought to be condemned and all improvements pertaining to the realty;

(b) the value of each and every separate estate or interest in the property; and

(c) if it consists of different parcels, the value of each parcel and of each estate or interest in each shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff;

(3) if the property, though no part of it is taken, will be damaged by the construction of the proposed improvement, and the amount of the damages;

(4) separately, how much the portion not sought to be condemned, and each estate or interest in it, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff. If the benefit is equal to the damages assessed under Subsection (2), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit is less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken;

(5) if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, an amount to compensate for the damage or impairment;

(6) if land on which crops are growing at the time of service of summons is sought to be condemned, the value that those crops would have had after being harvested, taking into account the expenses that would have been incurred cultivating and harvesting the crops; and

(7) as far as practicable compensation shall be assessed for each source of damages separately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-512. Damages -- When right has accrued -- Mitigation or reduction -- Improvements.

(1) For the purpose of assessing compensation and damages, the right to

compensation and damages shall be considered to have accrued at the date of the service of summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where damages are allowed, as provided in Section 78B-6-511.

(2) The court or the jury shall consider mitigation or reduction of damages in its assessment of compensation and damages if, after the date of the service of summons, the plaintiff:

(a) mitigates the damages to the property; or

(b) reduces the amount of property actually taken.

(3) Improvements put upon the property by the property owner subsequent to the date of service of summons may not be included in the assessment of compensation or damages.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-513. When title sought found defective -- Another action allowed.

If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the property as prescribed in this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-514. Payment of award -- Bond from railroad to secure fencing.

The plaintiff shall, within 30 days after final judgment, pay the sum of money assessed; and, if the plaintiff is a railroad company, it shall also execute to the defendant a bond, with sureties, to be determined and approved by the court or judge, conditioned that the plaintiff will build proper fences within six months from the time the railroad is built on or over the land taken. In an action on the bond all damages sustained and the cost of the construction of fences may be recovered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-515. Distribution of award -- Execution -- Annulment of proceedings on failure to pay.

Payment may be made to the defendants entitled to payment, or the money may be deposited in court for the defendants and distributed to those entitled to payment. If the money is not paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect shall set aside and annul the entire proceedings, and restore possession of the property to the defendants, if possession has been taken by the plaintiff.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-516. Judgment of condemnation -- Recordation -- Effect.

When payments have been made and the bond given, if the plaintiff elects to give one, as required by Sections 78B-6-514 and 78B-6-515, the court shall make a final judgment of condemnation, which shall describe the property condemned and the purpose of the condemnation. A copy of the judgment shall be filed in the office of the county recorder and the property described in it shall vest in the plaintiff for the purpose specified.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-517. Substitution of bond for deposit paid into court -- Abandonment of action by condemner -- Conditions of dismissal.

In the event that no order is entered by the court permitting payment of the deposit on account of the just compensation to be awarded in the proceeding within 30 days following its deposit, the court may, on application of the condemning authority, permit the substitution of a bond in an amount and with sureties as determined and approved by the court. Condemner, whether a public or private body, may, at any time prior to final payment of compensation and damages awarded the defendant by the court or jury, abandon the proceedings and cause the action to be dismissed without prejudice, provided, however, that as a condition of dismissal condemner first compensate condemnee for all damages he has sustained and also reimburse him in full for all reasonable and necessary expenses actually incurred by condemnee because of the filing of the action by condemner, including attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-518. Rights of cities and towns not affected.

Nothing in this part may be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-519. When right of way acquired -- Duty of party acquiring.

A party obtaining a right of way shall without delay construct crossings as required by the court or judge, and keep them and the way itself in good repair.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-520. Action to set aside condemnation for failure to commence or complete construction within reasonable time.

(1) In an action to condemn property, if the court makes a finding of what is a reasonable time for commencement of construction and use of all the property sought to be condemned and the construction and use is not accomplished within the time specified, the condemnee may file an action against the condemnor to set aside the condemnation of the entire parcel or any portion upon which construction and use was to have taken place.

(2) In the action, if the court finds that the condemnor, without reasonable

justification, did not commence or complete construction and use within the time specified, it shall enter judgment fixing the amount the condemnor has paid the condemnee, as a result of condemnation and all amounts due the condemnee as damages sustained by reason of condemnation, including damages resulting from partial completion of the contemplated use, plus all reasonable and necessary expenses actually incurred by the condemnee including attorney fees.

(3) If amounts due the condemnee under Subsection (2) exceed amounts paid by the condemnor, or these amounts are equal, judgment shall be entered in favor of the condemnee, which judgment shall describe the property condemned and award judgment for any amounts due condemnee. A copy of the judgment shall be filed in the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee.

(4) If amounts paid by the condemnor under Subsection (2) exceed amounts due the condemnee, judgment shall be entered describing the property condemned and giving the condemnee 60 days from the date of the judgment to pay the difference between the amounts to the condemnor. If payment is made, the court shall amend the judgment to reflect the payment and order the amended judgment filed with the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee. If payment is not made, the court shall amend the judgment to reflect nonpayment and order the amended judgment filed with the county recorder.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-520.3. Property sold under threat of eminent domain -- Right to repurchase property if property not used for purpose for which acquired.

(1) As used in this section:

(a) "Acquired property" means property that a condemnor purchases after May 11, 2009 from a condemnee under threat of condemnation.

(b) "Acquisition price" means the price which a condemnor pays a condemnee for property that the condemnor acquires under threat of condemnation.

(c) "Condemnee" means an owner of property who sells the property to a condemnor under threat of condemnation.

(d) "Condemnor" means a person who acquires property by purchase from a condemnee under threat of condemnation.

(e) "Under threat of condemnation" means the circumstances under which a condemnor, with the right to acquire the property by eminent domain, acquires property from a condemnee in a transaction that occurs:

(i) without a judgment having been entered in an eminent domain action; and

(ii) after the condemnor has sent the condemnee a written notice indicating an intent to pursue an eminent domain action to a judgment compelling the transaction.

(2) At the time of or within a reasonable time after an acquisition of property under threat of condemnation, a condemnor shall provide the condemnee a written statement identifying the public use for which the property is being acquired.

(3) Subject to Subsection (6), before the acquired property may be put to a use other than the public use for which the property was acquired, the condemnor

shall send a written offer by certified mail to the condemnee at the condemnee's last known address, offering to sell the acquired property to the condemnee at the acquisition price.

(4) (a) A condemnee may accept an offer under Subsection (3) if the offer is accepted within 90 days after the offer is sent to the condemnee.

(b) A condemnee's purchase of acquired property under this section shall be concluded within a reasonable time after the condemnee accepts the condemnor's offer to sell the acquired property.

(5) If the condemnee does not accept an offer under Subsection (3) within the time specified in Subsection (4), the condemnor has no further obligation under this section to the condemnee with respect to the acquired property.

(6) If a condemnor puts acquired property to the public use for which the property was acquired, the condemnor's obligation under Subsection (3) to offer to sell the acquired property to the condemnee terminates, even if the acquired property is subsequently put to a use other than the public use for which the property was acquired.

(7) A sale or transfer of acquired property none of which has been put to the public use for which the property was acquired is:

(a) considered to be a use other than the public use for which the property was acquired; and

(b) governed by this section and not Section 78B-6-521.

(8) Nothing in this section may be construed to affect any right or obligation under Section 78B-6-521.

(9) A condemnee may waive the condemnee's right to purchase acquired property as provided in this section by executing a written waiver.

Enacted by Chapter 322, 2009 General Session

78B-6-521. Sale of property acquired by eminent domain.

(1) As used in this section, "condemnation or threat of condemnation" means:

(a) acquisition through an eminent domain proceeding; or

(b) an official body of the state or a subdivision of the state, having the power of eminent domain, has specifically authorized the use of eminent domain to acquire the real property.

(2) If the state or one of its subdivisions, at its sole discretion, declares real property that is acquired through condemnation or threat of condemnation to be surplus real property, it may not sell the real property on the open market unless:

(a) the real property has been offered for sale to the original grantor, at the highest offer made to the state or one of its subdivisions with first right of refusal being given to the original grantor;

(b) the original grantor expressly waived in writing the first right of refusal on the offer or failed to accept the offer within 90 days after notification by registered mail to the last-known address; and

(c) neither the state nor the subdivision of the state selling the property is involved in the rezoning of the property or the acquisition of additional property to enhance the value of the real property to be sold.

(3) This section shall only apply to property acquired after July 1, 1983.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-522. Dispute resolution.

(1) In any dispute between a condemner and a private property owner arising out of this chapter, or a dispute over the taking of private property for a public use without the prior use of eminent domain, the private property owner may submit the dispute for mediation or arbitration to the Office of the Property Rights Ombudsman under Section 13-43-204.

(2) An action submitted to the Office of the Property Rights Ombudsman under authority of this section does not bar or stay any action for occupancy of premises authorized by Section 78B-6-510.

(3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under Section 13-43-204, has standing in an action brought in district court under this chapter to file with the court a motion to stay the action during the pendency of the mediation or arbitration.

(ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i) unless the mediator or arbitrator certifies at the time of filing the motion that a stay is reasonably necessary to reach a resolution of the case through mediation or arbitration.

(b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file with the district court a motion to terminate the stay within 30 days after:

(i) the resolution of the dispute through mediation;

(ii) the issuance of a final arbitration award; or

(iii) a determination by the mediator or arbitrator that mediation or arbitration is not appropriate.

(4) (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.

(b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:

(i) have an additional appraisal of the property prepared by an independent appraiser; and

(ii) require the condemnor to pay the costs of the first additional appraisal.

Amended by Chapter 59, 2014 General Session

78B-6-601. Penalty for wrongful refusal to allow writ of habeas corpus.

Any judge, whether acting individually or as a member of a court, who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding $5,000 to the aggrieved party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-602. Recommitment.

(1) In all cases where it is claimed that a person is illegally or wrongfully restrained or deprived of his liberty, where restraint or imprisonment is for a criminal offense and there is not sufficient cause for release, even though the commitment may have been informally made or without due authority, or the process may have been executed by a person not duly authorized, the court or judge may make a new commitment, or allow the party to post bail, if the case is bailable.

(2) All material witnesses shall be required to appear at the same time and place and not depart without leave. All documents shall be filed in the clerk's office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-603. Recommitment after discharge forbidden -- Exceptions.

A person who has been discharged by order of the court or judge upon habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause, except in the following cases:

(1) if the person has been discharged from custody on a criminal charge and is afterward committed for the same offense by legal order or process; or

(2) if, after discharge for defect of proof or for any defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-604. Refusing to exhibit authority for detention -- Penalty.

A person who refuses to deliver a copy of the legal process by which the person detains the plaintiff in custody to anyone who demands a copy for the purpose of filing a writ of habeas corpus is liable to the plaintiff in an amount not to exceed $200.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-605. Penalties for wrongful acts of defendant.

(1) A defendant, officer, or other person is guilty of a class B misdemeanor and liable to the injured party in an amount not to exceed $5,000 if:

(a) the defendant attempts to evade the service of the writ of habeas corpus; or

(b) an officer or other person willfully fails to comply with the legal duties imposed upon him or disobeys an order to release a person in custody.

(2) Any person knowingly aiding in or abetting invalidation of this section is subject to the same punishment and forfeiture.

Enacted by Chapter 3, 2008 General Session

78B-6-606. Judgment of removal -- Costs -- Penalty by fine where state is party.

If a defendant is found guilty of usurping, intruding into or unlawfully holding or exercising an office, franchise, or privilege, the court shall order the defendant removed from the office, and that the relator recover the costs of pursuing the action. The court may also, in its discretion, in actions to which the state is a party impose upon the defendant a fine not exceeding $5,000, to be paid to the state treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-607. Judgment against director of corporation -- Of induction in favor of person entitled.

When the action is against a director of a corporation, and the court finds that, at the election, either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, the court may order the defendant removed, and judgment of induction entered in favor of the person who was entitled to be declared elected at the election.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-608. Action for damages because of usurpation -- Limitation of action.

A person may, at any time within one year after the date of an order for removal, bring an action against the party removed under the provisions of Section 78B-6-606 or 78B-6-607 and recover the damages sustained by the usurpation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-609. Mandamus and prohibition -- Judgment.

In any proceeding to obtain a writ of mandate or prohibition, if judgment is given for the applicant, he may recover the damages which were sustained, as found by the jury, or determined by the court, or referees upon a reference, ordered together with costs. For damages and costs an execution may issue, and a peremptory mandate shall be awarded without delay.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-610. Disobedience of writ -- Punishment.

When a peremptory writ of mandate or writ of prohibition has been issued and directed to an inferior tribunal, corporation, board, or person, and the court determines that any member of the tribunal, corporation, board, or person upon whom the writ was personally served has, without just excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not exceeding $500. In cases of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for enforcement of the writ.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-701. Title.

This part is known and may be cited as the "Utah Product Liability Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-702. Definition -- Unreasonably dangerous.

As used in this part, "unreasonably dangerous" means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer, or user of that product in that community considering the product's characteristics, propensities, risks, dangers, and uses together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer.

Enacted by Chapter 3, 2008 General Session

78B-6-703. Defect or defective condition making product unreasonably dangerous -- Rebuttable presumption.

(1) In any action for damages for personal injury, death, or property damage allegedly caused by a defect in a product, a product may not be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.

(2) There is a rebuttable presumption that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-704. Prayer for damages.

No dollar amount shall be specified in the prayer of a complaint filed in a product liability action against a product manufacturer, wholesaler or retailer. The complaint shall merely pray for such damages as are reasonable in the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-705. Alteration or modification of product after sale as substantial contributing cause -- Manufacturer or seller not liable.

For purposes of Section 78B-5-818, fault shall include an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the

purpose, use, function, design, or intended use or manner of use of the product from that for which the product was originally designed, tested, or intended.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-706. Statute of limitations.

A civil action under this part shall be brought within two years from the time the individual who would be the claimant in the action discovered, or in the exercise of due diligence should have discovered, both the harm and its cause.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-707. Indemnification provisions void and unenforceable.

Any clause in a sales contract or collateral document that requires a purchaser or end user of a product to indemnify, hold harmless, or defend a manufacturer of a product is contrary to public policy and void and unenforceable if a defect in the design or manufacturing of the product causes an injury or death.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-801. Definitions.

(1) "Commercial tenant" means any tenant who may be a body politic and corporate, partnership, association, or company.

(2) "Forcible detainer" means:

(a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or

(b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.

(3) "Forcible entry" means:

(a) entering any real property by:

(i) breaking open doors, windows, or other parts of a house;

(ii) fraud, intimidation, or stealth; or

(iii) any kind of violence or circumstances of terror; or

(b) after entering peaceably upon real property, turning out by force, threats, or menacing conduct the party in actual possession.

(4) "Occupant of real property" means one who within five days preceding an unlawful entry was in the peaceable and undisturbed possession of the property.

(5) "Owner:"

(a) means the actual owner of the premises;

(b) has the same meaning as landlord under common law and the statutes of this state; and

(c) includes the owner's designated agent or successor to the estate.

(6) "Tenant" means any natural person and any individual, including a commercial tenant.

(7) "Unlawful detainer" means unlawfully remaining in possession of property

after receiving a notice to quit, served as required by this chapter, and failing to comply with that notice.

(8) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

Amended by Chapter 184, 2009 General Session
Amended by Chapter 298, 2009 General Session

78B-6-802. Unlawful detainer by tenant for a term less than life.

(1) A tenant holding real property for a term less than life, is guilty of an unlawful detainer if the tenant:

(a) except as provided in Subsection (1)(i), continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) having leased real property for an indefinite time with monthly or other periodic rent reserved and except as provided in Subsection (1)(i):

(i) continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more prior to the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;

(c) continues in possession, in person or by subtenant, after default in the payment of any rent or other amounts due and after a notice in writing requiring in the alternative the payment of the rent and other amounts due or the surrender of the detained premises, has remained uncomplied with for a period of three calendar days after service, which notice may be served at any time after the rent becomes due;

(d) assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises after service of a three calendar days' notice to quit;

(e) sets up or carries on any unlawful business on or in the premises after service of a three calendar days' notice to quit;

(f) suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

(g) commits a criminal act on the premises and remains in possession after service of a three calendar days' notice to quit;

(h) continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon the tenant and upon any subtenant in actual occupation of the premises remains uncomplied with for three calendar days after

service; or

(i) (i) is a tenant under a bona fide tenancy as provided in Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22; and

(ii) continues in possession after the effective date of a notice to vacate given in accordance with Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22.

(2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, the notice provided for in Subsections (1)(d) through (g) may be given.

(3) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

Amended by Chapter 66, 2010 General Session

78B-6-802.5. Unlawful detainer after foreclosure or forced sale.

A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if the person:

(1) defaulted on his or her obligations resulting in disposition of the property by a trustee's sale or sheriff's sale; and

(2) continues to occupy the property after the trustee's sale or sheriff's sale after being served with a notice to quit by the purchaser.

Enacted by Chapter 184, 2009 General Session

78B-6-803. Right of tenant of agricultural lands to hold over.

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the owner, the tenant shall be considered to be in possession by permission of the owner. The tenant shall be entitled to hold under the terms of the lease for another full year and may not be guilty of an unlawful detainer during that year. The holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-804. Remedies available to tenant against undertenant.

A tenant may take proceedings similar to those prescribed in this part to obtain possession of premises let to an undertenant in case of the undertenant's unlawful detention of the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-805. Notice to quit -- How served.

(1) The notices required by this part may be served:

(a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant, by delivering a copy to the commercial tenant's usual place of business by leaving a copy of the notice with a person of suitable age and discretion;

(b) by sending a copy through registered or certified mail addressed to the tenant at the tenant's residence or, if the tenant is a commercial tenant, by sending a copy through registered or certified mail addressed to the commercial tenant's usual place of business;

(c) if the tenant is absent from the residence or usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the tenant's residence or place of business;

(d) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property; or

(e) if an order of abatement by eviction of the nuisance is issued by the court as provided in Section 78B-6-1109, when issued, the parties present shall be on notice that the abatement by eviction order is issued and immediately effective or as to any absent party, notice shall be given as provided in Subsections (1)(a) through (e).

(2) Service upon a subtenant may be made in the same manner as provided in Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-806. Necessary parties defendant.

(1) No person other than the tenant of the premises, a lease signer, and subtenant if there is one in the actual occupation of the premises when the action is commenced, may be made a party defendant in the proceeding, except as provided in Section 78B-6-1111. A proceeding may not abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant. If it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment shall be rendered against those parties.

(2) If a person has become a subtenant of the premises in controversy after the service of any notice as provided in this part, the fact that the notice was not served on the subtenant is not a defense to the action. All persons who enter under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.

(3) A landlord, owner, or designated agent is a necessary party defendant only in an abatement by eviction action for an unlawful drug house as provided in Section 78B-6-1111.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service of summons.

(1) The plaintiff, in his complaint:

(a) shall set forth the facts on which he seeks to recover;

(b) may set forth any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer; and

(c) claim damages or compensation for the occupation of the premises, or both.

(2) If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of rent due.

(3) A judge, court clerk, or plaintiff's counsel shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall be three business days from the date of service, unless the defendant objects to the number of days, and the court determines that the facts of the case should allow more time.

(4) The court may authorize service by publication or mail for cause shown.

(5) Service by publication is complete one week after publication.

(6) Service by mail is complete three days after mailing.

(7) The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 121, 2008 General Session

78B-6-808. Possession bond of plaintiff -- Alternative remedies.

(1) At any time between the filing of the complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.

(2) The court shall approve the bond in an amount which is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff.

(3) The plaintiff shall notify the defendant of the possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (4).

(4) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsections (1) through (3):

(a) With respect to an unlawful detainer action based solely upon nonpayment of rent or other amounts due, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three calendar days of the service of the notice of the possession bond, pays accrued rent, all other amounts due, and other costs, including attorney fees, as provided in the rental agreement.

(b) (i) The defendant may remain in possession if he executes and files a

counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.

(ii) The form of the bond is at the defendant's option.

(iii) The bond shall be payable to the clerk of the court.

(iv) The defendant shall file the bond prior to the later of the expiration of three business days from the date he is served with notice of the filing of plaintiff's possession bond or within 24 hours after the court sets the bond amount.

(v) Notwithstanding Subsection (4)(b)(iv), the court may allow a period of up to 72 hours for the posting of the counter bond.

(vi) The court shall approve the bond in an amount which is the probable amount of costs of suit, including attorney fees and actual damages which may result to the plaintiff if the defendant has improperly withheld possession.

(vii) The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.

(c) If the defendant demands, within three days of being served with notice of the filing of plaintiff's possession bond, the defendant shall be granted a hearing within three days of the defendant's demand.

(5) If the defendant does not elect and comply with a remedy under Subsection (4) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. A constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(6) If the defendant demands a hearing under Subsection (4)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (4)(b) and shall expedite all further proceedings, including beginning the trial no later than 30 days from the posting of the plaintiff's bond, unless the parties otherwise agree.

(7) If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-809. Proof required of plaintiff -- Defense.

(1) On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.

(2) In defense, the defendant may show that he or his ancestors, or those whose interest in the premises he claims, had been in the quiet possession of the property for the space of one entire year continuously before the commencement of the proceedings, and that his interest is not ended or determined, and that this showing is a bar to the proceedings.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-810. Court procedures.

(1) In an action under this chapter in which the tenant remains in possession of the property:

(a) the court shall expedite the proceedings, including the resolution of motions and trial;

(b) the court shall begin the trial within 60 days after the day on which the complaint is served, unless the parties agree otherwise; and

(c) if this chapter requires a hearing to be held within a specified time, the time may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

(2) (a) In an action for unlawful detainer where the claim is for nonpayment of rent or for occupancy of a property after a forced sale as described in Subsection 78B-6-802.5, the court shall hold an evidentiary hearing, upon request of either party, within 10 days after the day on which the defendant files the defendant's answer.

(b) At the evidentiary hearing held in accordance with Subsection (2)(a):

(i) the court shall determine who has the right of occupancy during the litigation's pendency; and

(ii) if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges an act that would be considered criminal under the laws of this state, the court shall hold an evidentiary hearing within 10 days after the day on which the complaint is filed to determine whether the alleged act occurred.

(b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is filed and notice of the hearing shall be served upon the defendant with the summons at least three calendar days before the scheduled time of the hearing.

(c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a), determines that it is more likely than not that the alleged act occurred, the court shall issue an order of restitution.

(d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

(f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

(i) an act that would be considered a felony under the laws of this state;

(ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;

(iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;

(iv) a drug- or gang-related act that would be considered criminal;

(v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and

(vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

(4) (a) At any hearing held in accordance with this chapter in which the tenant after receiving notice fails to appear, the court shall issue an order of restitution.

(b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(5) A court adjudicating matters under this chapter may make other orders as are appropriate and proper.

(6) The expedited hearing provisions in this section do not apply to actions involving commercial tenants.

Amended by Chapter 184, 2009 General Session
Amended by Chapter 298, 2009 General Session

78B-6-811. Judgment for restitution, damages, and rent -- Immediate enforcement -- Treble damages.

(1) (a) A judgment may be entered upon the merits or upon default.

(b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section 78B-6-812.

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.

(ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

(a) forcible entry;

(b) forcible or unlawful detainer;

(c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;

(d) the amounts due under the contract, if the alleged unlawful detainer is after default in the payment of amounts due under the contract; and

(e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107 through 78B-6-1114.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e), and for reasonable attorney fees.

(4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be issued immediately after the entry of the judgment.

(b) In all cases, the judgment may be issued and enforced immediately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.

(1) Each order of restitution shall:

(a) direct the defendant to vacate the premises, remove the defendant's personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;

(b) advise the defendant of the time limit set by the court for the defendant to vacate the premises, which shall be three calendar days following service of the order, unless the court determines that a longer or shorter period is appropriate under the circumstances; and

(c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section 78B-6-805 by a person authorized to serve process pursuant to Subsection 78B-8-302(1). If personal service is impossible or impracticable, service may be made by:

(i) mailing a copy of the order and the form by first class mail to the defendant's last-known address and posting a copy of the order and the form at a conspicuous place on the premises; or

(ii) mailing a copy of the order and the form to the commercial tenant defendant's last-known place of business and posting a copy of the order and the form at a conspicuous place on the business premises.

(b) A request for hearing by the defendant may not stay enforcement of the restitution order unless:

(i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond to the clerk of the court in an amount approved by the court according to the formula set forth in Subsection 78B-6-808(4)(b); and

(ii) the court orders that the restitution order be stayed.

(c) The date of service, the name, title, signature, and telephone number of the person serving the order and the form shall be legibly endorsed on the copy of the order and the form served on the defendant.

(d) The person serving the order and the form shall file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.

(3) (a) If the defendant fails to comply with the order within the time prescribed by the court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the least destructive means possible to remove the defendant.

(b) Personal property of the defendant may be removed from the premises by the sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and storage to the plaintiff, who shall store the personal property in a suitable place and in a reasonable manner.

(c) A tenant may not access the property until the removal and storage costs have been paid in full, except that the tenant shall be provided reasonable access within five business days to retrieve:

(i) clothing;

(ii) identification;

(iii) financial documents, including all those related to the tenant's immigration status, employment status;

(iv) documents pertaining to receipt of public services; and

(v) medical information, prescription medications, and any medical equipment required for maintenance of medical needs.

(d) The personal property removed and stored shall, after 15 calendar days, be considered abandoned property and subject to Section 78B-6-816.

(4) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant may file a request for a hearing. The court shall set the matter for hearing within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

(5) The Judicial Council shall draft the forms necessary to implement this section.

Amended by Chapter 206, 2013 General Session

78B-6-813. Time for appeal.

(1) Except as provided in Subsection (2), either party may, within 10 days, appeal from the judgment rendered.

(2) In a nuisance action under Sections 78B-6-1107 through 78B-6-1114, any party may appeal from the judgment rendered within three days.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-814. Exclusion of tenant without judicial process prohibited -- Abandoned premises excepted.

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the leased premises under Subsection 78B-6-816(2) and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-815. Abandonment.

"Abandonment" is presumed in either of the following situations:

(1) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises.

(2) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent when due and the tenant's personal property has been removed from the dwelling unit and there is no reasonable evidence that the tenant is occupying the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-816. Abandoned premises -- Retaking and rerenting by owner -- Liability of tenant -- Personal property of tenant left on premises.

(1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This Subsection (1) applies, if less than Subsection (1)(a), notwithstanding that the owner did not rerent the premises.

(2) (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.

(b) (i) The owner shall post a copy of the notice in a conspicuous place and send by first class mail to the last known address for the tenant a notice that the property is considered abandoned.

(ii) The tenant may retrieve the property within 15 calendar days from the date of the notice if the tenant tenders payment of all costs of inventory, moving, and storage to the owner.

(iii) Except as provided in Subsection (5), if the property has been in storage for at least 15 calendar days and the tenant has made no reasonable effort to recover the property after notice was sent, pay reasonable costs associated with the inventory, removal, and storage, and no court hearing on the property is pending, the owner may:

(A) sell the property at a public sale and apply the proceeds toward any amount the tenant owes; or

(B) donate the property to charity if the donation is a commercially reasonable alternative.

(c) Any money left over from the public sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property is Abandoned or Unclaimed.

(d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens, or any other contractual liens or rights.

(3) If abandoned property is determined to belong to a person who is the tenant or an occupant, the tenant or occupant may claim the property, upon payment of any costs, inventory, moving, and storage, by delivery of a written demand with evidence of ownership of the personal property within 15 calendar days after the notice described in Subsection (2)(b) is sent. The owner may not be liable for the loss of the abandoned personal property if the written demand is not received.

(4) As used in this section, "personal property" does not include a motor vehicle, as defined in Section 41-1a-102.

(5) A tenant has no recourse for damage or loss if the tenant fails to recover any abandoned property as required in this section.

(6) An owner is not required to store the following abandoned personal property:

(a) chemicals, pests, potentially dangerous or other hazardous materials;

(b) animals, including dogs, cats, fish, reptiles, rodents, birds, or other pets;

(c) gas, fireworks, combustibles, or any item considered to be hazardous or explosive;

(d) garbage;

(e) perishable items; or

(f) items that when placed in storage might create a hazardous condition or a pest control issue.

(7) An owner shall give an extension for up to 15 calendar days, beyond the 15 calendar day limit described in Subsection (2)(b)(ii), to recover the abandoned property, if a tenant provides:

(a) a copy of a police report or protection order for situations of domestic violence, as defined in Section 77-36-1;

(b) verification of an extended hospitalization from a verified medical provider; or

(c) a death certificate or obituary for a tenant's death, provided by an immediate family member.

(8) Items listed in Subsection (6) may be properly disposed of by the owner immediately upon determination of abandonment. A tenant may not recover for disposal of abandoned items listed in Subsection (6).

(9) Notice of any public sale shall be mailed to the last known address of the tenant at least five calendar days prior to the public sale.

(10) If the tenant is present at the public sale:

(a) the tenant may specify the order in which the personal property is sold;

(b) the owner may sell only as much personal property necessary to satisfy the amount due under the rental agreement and statutorily allowed damages, costs, and fees associated with the abandoned items; and

(c) any unsold personal property shall be released to the tenant.

(11) If the tenant is not present at the public sale:

(a) all items may be sold; and

(b) any surplus amount over the amount due to the owner shall be paid to the

tenant, if the tenant's current location is known. If the tenant's location is not known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Amended by Chapter 206, 2013 General Session

78B-6-901. Form of action -- Judgment -- Special execution.

(1) There is only one action for the recovery of any debt, or the enforcement of any right, secured solely by mortgage upon real estate and that action shall be in accordance with the provisions of this chapter.

(2) A judgment shall include:

(a) the amount due, with costs and disbursements;

(b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount and accruing costs;

(c) direction to the sheriff to proceed and sell the property according to the provisions of law relating to sales on execution; and

(d) a special execution or order of sale shall be issued for that purpose.

Amended by Chapter 146, 2009 General Session

78B-6-901.5. Notice to tenant on residential property to be foreclosed.

(1) As used in this section, "residential rental property" means property on which a mortgage was given to secure an obligation the stated purpose of which is to finance residential rental property.

(2) Within 20 days after filing an action under this part to foreclose property that includes or constitutes residential rental property, the plaintiff in the action shall:

(a) post a notice:

(i) on the primary door of each dwelling unit on the property that is the subject of the foreclosure action, if the property has fewer than nine dwelling units; or

(ii) in at least three conspicuous places on the property that is the subject of the foreclosure action, if the property to be sold has nine or more dwelling units; or

(b) mail a notice to the occupant of each dwelling unit on the property that is the subject of the foreclosure action.

(3) The notice required under Subsection (2) shall:

(a) be in at least 14-point font;

(b) include the name and address of:

(i) the owner of the property;

(ii) the trustor or mortgagor, as the case may be, on the instrument creating a security interest in the property;

(iii) the trustee or mortgagee, as the case may be, on the instrument; and

(iv) the beneficiary, if the instrument is a trust deed;

(c) contain the legal description and address of the property; and

(d) include a statement in substantially the following form:

"Notice to Tenant

An action to foreclose the property described in this notice has been filed. If the foreclosure action is pursued to its conclusion, the described property will be sold

at public auction to the highest bidder unless the default in the obligation secured by this property is cured.

If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the sale of the property at auction, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under this section or a defect in that notice may not be the basis for challenging or defending a foreclosure action or for invaliding a sale of the property pursuant to a foreclosure action.

Enacted by Chapter 66, 2010 General Session

78B-6-902. Deficiency judgment -- Execution.

If it appears that the proceeds of the sale are insufficient and a balance still remains due, the judgment shall be docketed by the clerk and execution may be issued for the balance as in other cases. A general execution may not be issued until after the sale of the mortgaged property and the application of the amount realized to the preceding judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-903. Necessary parties -- Unrecorded rights barred.

A person holding a conveyance from or under the mortgagor or having a lien on the property, neither of which is properly documented or recorded in the proper office at the time of the commencement of the action, is not required to be made a party to the action. The proceedings and any judgment rendered are conclusive against the party holding the unrecorded conveyance or lien as if the person had been made a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-904. Sales -- Disposition of surplus money.

If there is surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may order the amount paid to the person entitled to it. In the meantime the court may direct it to be deposited with the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-905. Sales -- When debt due in installments.

If the debt for which the mortgage, lien, or encumbrance is held is not all due, then as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease. As often as more becomes due on principal or interest, the court may, on motion, order more to be sold. If the property cannot be sold in portions without injury to the parties, the entire parcel may be ordered sold and the entire debt and costs paid. There shall be a rebate of interest where a rebate is proper.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-906. Right of redemption -- Sales by parcels -- Of land and water stock.

(1) Sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under executions generally.

(2) In all cases where the judgment directs the sale of land, together with shares of corporate stock evidencing title to a water right used, intended to be used, or suitable for use, on the land, the court shall equitably apportion the water stock to the land. If the court divides the land into individual parcels for sale, the water stock may also be divided and applied to each parcel. The land and water stock in each parcel shall be sold together, and for the purpose of the sale shall be regarded as real estate and subject to redemption as previously specified.

(3) In all sales of real estate under foreclosure the court may determine the parcels and the order in which the parcels of property shall be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-907. Restraining possessor from injuring property.

The court or judge may upon a showing of good cause enjoin the party in possession of the property from doing any act to injure the property during the foreclosure of a mortgage on it, or after a sale on execution.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-908. Attorney fees.

(1) In all cases of foreclosure when an attorney's fee is claimed by the plaintiff, the amount shall be fixed by the court. No other or greater amount shall be allowed or decreed than the sum which shall appear by the evidence to be actually charged by and to be paid to the attorney for the plaintiff.

(2) If it shall appear that there is an agreement or understanding to divide the fees between the plaintiff and his attorney, or between the attorney and any other person except an attorney associated with him in the cause, the defendant shall only be ordered to pay the amount to be retained by the attorney or attorneys.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-909. Environmental impairment to real property security interest -- Remedies of lender.

(1) As used in this section:

(a) "Borrower" means:

(i) the trustor under a deed of trust, or a mortgagor under a mortgage, when the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation; and

(ii) includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(b) "Environmentally impaired" means the estimated costs to clean up and remediate a past or present release of any hazardous matter into, onto, beneath, or from the real property security exceed 25% of the higher of the aggregate fair market value of all security for the loan or extension of credit at the time:

(i) of the making of the loan or extension of credit;

(ii) of the discovery of the release or threatened release by the secured lender; or

(iii) an action is brought under this section.

(c) "Hazardous matter" means:

(i) any hazardous substance or hazardous material as defined in Section 19-6-302; or

(ii) any waste or pollutant as defined in Section 19-5-102.

(d) "Real property security" means any real property and improvements other than real property that contains only one but not more than four dwelling units, and is solely used for either:

(i) residential purposes; or

(ii) if reasonably contemplated by the parties to the deed of trust or mortgage, residential purposes as well as limited agricultural or commercial purposes incidental to the residential purposes.

(e) "Release" has the same meaning as in Section 19-6-302.

(f) "Secured lender" means:

(i) the trustee, the beneficiary, or both under a deed of trust against the real property security;

(ii) the mortgagee under a mortgage against the real property security; and

(iii) any successor-in-interest of the trustee, beneficiary, or mortgagee under the deed of trust or mortgage.

(2) Under this section:

(a) Estimated costs to clean up and remediate the contamination caused by the release include only those costs that would be incurred reasonably and in good faith.

(b) Fair market value is determined without giving consideration to the release, and is exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender.

(c) Any real property security for any loan or extension of credit secured by a single parcel of real property is considered environmentally impaired if the property is:

(i) included in or proposed for the National Priorities List under Section 42 U.S.C. 9605;

(ii) any list identifying leaking underground storage tanks under 42 U.S.C. 6991 et seq.; or

(iii) in any list published by the Department of Environmental Quality under Section 19-6-311.

(3) A secured lender may elect between the following when the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:

(a) (i) waiver of its lien against:

(A) any parcel of real property security or any portion of that parcel that is environmentally impaired; and

(B) all or any portion of the fixtures and personal property attached to the parcels; and

(ii) exercise of:

(A) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment; and

(B) any other rights and remedies permitted by law; or

(b) exercise of:

(i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security; and

(ii) any other rights and remedies permitted by law, including the right to obtain a deficiency judgment.

(c) The provisions of this subsection take precedence over Section 78B-6-901.

(4) (a) Subsection (3) is applicable only if in conjunction with and at the time of the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, the secured lender:

(i) did not know or have reason to know of a release of any hazardous matter into, onto, beneath, or from the real property security; and

(ii) undertook all appropriate inquiry into the previous ownership and uses of the real property security consistent with good commercial or customary practice in an effort to minimize liability.

(b) For the purposes of Subsection (4)(a)(ii), the court shall take into account:

(i) any specialized knowledge or experience of the secured lender;

(ii) the relationship of the purchase price to the value of the real property security if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the real property security;

(iv) the obviousness of the presence or likely presence of contamination at the real property security; and

(v) the ability to detect the contamination by appropriate inspection.

(5) (a) Before the secured lender may waive its lien against any real property security under Subsection (3)(a) on the basis of environmental impairment the

secured lender shall:

(i) provide written notice of the default to the borrower; and

(ii) bring a valuation and confirmation action against the borrower in a court of competent jurisdiction and obtain an order establishing the value of the subject real property security.

(b) The complaint in an action under Subsection (5)(a)(ii) may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under Subsection (3)(a) may result only if a final money judgment is obtained against the borrower.

(6) (a) If a secured lender elects the rights and remedies under Subsection (3)(a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law.

(b) Under this subsection the amount of the judgment of the secured lender under Subsection (3)(a) is limited to the remaining balance of the borrower's obligations after the application of the proceeds of the additional collateral.

(c) The borrower may waive or modify the foreclosure requirements of this Subsection (6) if the waiver or modification is in writing and signed by the borrower after default.

(7) This section does not affect any rights or obligations arising under contracts existing before July 1, 1993, and applies only to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after July 1, 1993.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1001. Right of action for waste -- Damages.

If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property commits waste on the property, any person aggrieved by the waste may bring an action against the person. Judgment in the action may include treble damages.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1002. Right of action for injuries to trees -- Damage.

Any person who without authority cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, town or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front, without lawful authority, is liable to the owner of such land, or to the city or town, for treble the amount of damages which may be assessed in a civil action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1003. Limited damages in certain cases.

Nothing in Section 78B-6-1002 authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1101. Definitions -- Nuisance -- Right of action.

(1) A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action.

(2) A nuisance may include the following:

(a) drug houses and drug dealing as provided in Section 78B-6-1107;

(b) gambling as provided in Title 76, Chapter 10, Part 11;

(c) criminal activity committed in concert with two or more persons as provided in Section 76-3-203.1;

(d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) party houses which frequently create conditions defined in Subsection (1); and

(g) prostitution as provided in Title 76, Chapter 10, Part 13.

(3) A nuisance under this part includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:

(a) drifts in more than once in each of two or more consecutive seven-day periods; and

(b) creates any of the conditions under Subsection (1).

(4) Subsection (3) does not apply to:

(a) residential rental units available for temporary rental, such as for vacations, or available for only 30 or fewer days at a time; or

(b) hotel or motel rooms.

(5) Subsection (3) does not apply to any unit that is part of a timeshare development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

(6) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(7) "Agricultural operation" means any activity engaged in the commercial production of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the facilities, equipment, and property used to facilitate the activity.

(8) "Manufacturing facility" means any factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or

physical objects are combined to form a new material, commodity, or physical object.

Amended by Chapter 193, 2010 General Session

78B-6-1102. Action.

(1) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(2) Upon judgment, the nuisance may be enjoined or abated, and damages may be recovered.

Enacted by Chapter 3, 2008 General Session

78B-6-1102.5. Violation of order enjoining a nuisance.

A person who knowingly violates any judgment or order abating or otherwise enjoining a nuisance as defined under Section 78B-6-1101 is guilty of a class B misdemeanor.

Enacted by Chapter 99, 2010 General Session

78B-6-1103. Manufacturing facility in operation over three years -- Limited application of restrictions.

(1) Notwithstanding Sections 76-10-803 and 78B-6-1101, a manufacturing facility or operation may not be considered a nuisance, private or public, by virtue of any changed circumstance in land uses near the facility after it has been in operation for more than three years if the manufacturing facility or operation was not a nuisance at the time it began operation. The manufacturing facility may not increase the condition asserted to be a nuisance. The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.

(2) The provisions of Subsection (1) may not affect or defeat the right of any person to recover damages for any injuries or damage sustained because of any pollution of, or change in the condition of, the waters of any stream or the overflow of the lands of any person.

(3) Any and all ordinances now or in the future adopted by any county or municipal corporation in which a manufacturing facility is located and which makes its operation a nuisance or providing for an abatement as a nuisance in the circumstances set forth in this section are null and void. The provisions of this Subsection (3) may not apply whenever a nuisance results from the negligent or improper operation of a manufacturing facility.

Amended by Chapter 185, 2011 General Session

78B-6-1104. Agricultural operations -- Nuisance liability.

(1) Activities conducted in the normal and ordinary course of agricultural operations or conducted in accordance with sound agricultural practices are presumed to be reasonable and not constitute a nuisance.

(2) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices.

Amended by Chapter 21, 2009 General Session

78B-6-1105. Tobacco smoke -- Legislative intent.

(1) The Legislature finds:

(a) the federal Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos;

(b) the EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and

(c) the EPA has determined that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons.

(2) The Legislature finds that environmental tobacco smoke generated in a rental or condominium unit may drift into other units, exposing the occupants of those units to tobacco smoke, and that standard construction practices are not effective in preventing this drift of tobacco smoke.

(3) The Legislature further finds that persons who desire to not be exposed to drifting environmental tobacco smoke should be able to determine in advance of entering into a rental, lease, or purchase agreement whether the subject unit may be exposed to environmental tobacco smoke.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1106. Rental units -- Tobacco smoke.

(1) There is no cause of action for a nuisance under Subsection 78B-6-1101(3) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:

(a) smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject to the agreement; and

(b) by signing the agreement the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection 78B-6-1101(3).

(2) A cause of action for a nuisance under Subsection 78B-6-1101(3) may be brought against:

(a) the individual generating the tobacco smoke;

(b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of the rental or lease agreement, on the premises he rents or leases; or

(c) the landlord, but only if:

(i) the terms of the renter's or lessee's contract provide the unit will not be

subject to the nuisance of drifting tobacco smoke;

(ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and

(iii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(3) after receipt of written notice under Subsection (2)(c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (2)(c)(i).

Enacted by Chapter 3, 2008 General Session

78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.

(1) Every building or place is a nuisance where:

(a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition occurs of any controlled substance, precursor, or analog specified in Title 58, Chapter 37, Utah Controlled Substances Act;

(b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in Subsection 78B-6-1101(1);

(c) criminal activity is committed in concert with two or more persons as provided in Section 76-3-203.1;

(d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) parties occur frequently which create the conditions of a nuisance as defined in Subsection 78B-6-1101(1);

(g) prostitution or promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

(h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

(2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to possession of a controlled substance.

(3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the nuisance as defined in Subsection (1).

Amended by Chapter 193, 2010 General Session

78B-6-1108. Nuisance -- Abatement by eviction.

(1) Whenever there is reason to believe that a nuisance under Sections 78B-6-1107 through 78B-6-1114 is kept, maintained, or exists in any county, the county attorney of the county, the city attorney of any incorporated city, any citizen or citizens of the state residing in the county, or any corporation, partnership or business doing business in the county, in his or their own names, may maintain an action in a

court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant.

(2) The court may designate a spokesperson of any group of citizens who would otherwise have the right to maintain an action in their individual names against the defendant under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1109. Abatement by eviction order -- Grounds.

An order of abatement by eviction may issue only upon a showing by the applicant by a preponderance of the evidence that:

(1) the applicant will suffer irreparable harm unless the order of abatement by eviction issues;

(2) the threatened injury to the applicant outweighs whatever damage the proposed order of abatement by eviction may cause the party so ordered;

(3) the order of abatement by eviction, if issued, would not be adverse to the public interest; and

(4) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1110. Prior acts or threats of violence -- Protection of witnesses.

At the time of application for abatement of the nuisance by eviction pursuant to Sections 78B-6-1108 and 78B-6-1109, if proof of the existence of the nuisance depends, in whole or in part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, nondisclosure of the name, address, or any other information which may identify those witnesses.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1111. Landlord, owner, or designated agent -- Necessary party -- Automatic eviction.

(1) A landlord, owner, or designated agent is a necessary party defendant in a nuisance action under Sections 78B-6-1107 through 78B-6-1114 for entry of an order to abate the nuisance by eviction where the acts complained of are those of third parties upon the premises of the landlord, owner, or designated agent.

(2) In the presence of the applicant, the tenant and the landlord, owner, or designated agent at the court's hearing on the action to abate the nuisance by eviction, the court shall notify the necessary parties of its finding that:

(a) a nuisance exists as defined in Section 78B-6-1107; and

(b) as a result, the court is issuing an order to evict the tenant subject to compliance with the security requirement in Section 78B-6-1112.

(3) In all cases, including default judgments, the order of abatement by eviction may be issued and enforced immediately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1112. Security requirement -- Amount not a limitation -- Jurisdiction over surety.

(1) The court shall condition issuance of the order of abatement by eviction on the giving of security by the applicant, in such sum and form as the court determines proper, unless it appears that none of the parties will incur or suffer costs, attorney fees, or damage as the result of any wrongful order of abatement by eviction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(2) The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the order of abatement by eviction, or damages that may be awarded to a party who is found to have been wrongfully evicted.

(3) A surety upon a bond or undertaking under this section submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall immediately mail copies to the persons giving the security if their addresses are known.

(4) The plaintiff, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the plaintiff's giving of security as provided in Subsection 78B-6-1112(1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1113. Evidence of nuisance.

In any action for abatement by eviction instituted pursuant to Sections 78B-6-1107 through 78B-6-1114, all evidence otherwise authorized by law, including evidence of reputation in a community, is admissible to prove the existence of a nuisance by a preponderance of the evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1114. Award of costs and attorney fees.

(1) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which a governmental agency, private citizen or citizens, corporation, partnership, or business seeks to abate the nuisance by eviction in or upon any building or place where the

nuisance occurs as provided in Section 78B-6-1107.

(2) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees against a defendant landlord, owner, or designated agent only when the court finds that the defendant landlord, owner, or designated agent had actual notice of the nuisance action and willfully failed to take reasonable action within a reasonable time to abate the nuisance.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1201. Partition -- By cotenants of real property.

A person who is a joint tenant or tenant in common with another of real property may bring an action to partition the property for the benefit of each tenant. An action for partition may require the sale of the property if it appears that the partition cannot be made without prejudice to the owners.

Enacted by Chapter 3, 2008 General Session

78B-6-1202. Complaint -- To set forth interests of all parties.

(1) The interests of all persons in the property, whether the persons are known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff.

(2) If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder making the parties unknown, that fact must be set forth in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1203. Parties -- Only holders of recorded rights necessary.

A person who does not have a conveyance of, or claim a lien on, the property, or some part of it, is not required to be made a party to the action, unless the conveyance or lien has been properly recorded.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1204. Lis pendens required.

(1) The plaintiff shall file a notice of the action with the recorders of all the counties in which the property is situated. The notice shall contain:

(a) a copy of such complaint; or

(b) a notice of the pendency of the action, containing:

(i) the names of all known parties;

(ii) the object of the action; and

(iii) a description of the property affected.

(2) Once the notice is filed, all persons having an interest in the property shall be considered to have notice of the pendency of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1205. Summons -- To whom directed.

The summons shall be directed to:

(1) all joint tenants;

(2) tenants in common of all persons having any interest in, or recorded liens upon the property or any portion of the property; and

(3) any other person claiming any interest in the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1206. Service by publication.

If a party having a share or interest is unknown, or any one of the known parties resides out of the state or cannot be found, the summons may be served upon them by publication in accordance with the Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1207. Answer must set forth interests claimed.

(1) All defendants shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property.

(2) If a defendant claims a lien on the property by mortgage, judgment, or otherwise, the defendant shall state the original amount and date of the mortgage or judgment, and the amounts remaining unpaid. The defendant shall also state whether the mortgage or judgment has been secured in any other way, and if secured, the extent and nature of the security. If this information is not provided, the defendant shall be considered to have waived any rights to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1208. Right of all parties may be determined.

The rights of all parties may be put in issue, tried, and determined by the action. If the court determines a sale of the premises is necessary, the title shall be ascertained to the satisfaction of the court before the judgment of sale can be made. If service of the summons was made by publication, similar proof is required concerning the rights of absent or unknown parties before judgment is rendered. If there are several unknown persons having an interest in the property, their rights may be considered together in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1209. Partial partition allowed -- When.

(1) If the court determines that it is impracticable or highly inconvenient to make a complete partition among all the parties in interest, the court may first determine the shares or interests respectively held by the original cotenants as if they were the only parties to the action.

(2) After the initial partition, the court may partition separately each portion allotted among those claiming under a specific tenant whose interest was determined in Subsection (1), unless the parties choose to remain as tenants in common.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1210. When all holders of recorded rights are not made parties -- Procedure -- Reference.

If there are outstanding liens or encumbrances of record upon the property when the action is commenced, the persons holding the liens shall be made parties to the action. If the persons are not made parties, the court shall either order the persons made parties to the action by an amendment or supplemental complaint, or appoint a referee to determine whether the liens or encumbrances have been paid. If the referee determines that amounts remain due, the referee shall determine whether the amounts are secured or unsecured and the order of precedence among all the liens or encumbrances on the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1211. Notice of appearance before referee -- Referee's report.

(1) The referee appointed in Section 78B-6-1210 shall set a date to hear from each person holding a lien on the property. The plaintiff shall have a notice and summons served on each person identified in Section 78B-6-1210 who is not a party to the action.

(2) The summons shall state the specific time and place of the hearing and instruct the person to appear with proof of all amounts due.

(3) If the person cannot be found, the court may direct service to be made by publication in accordance with the Utah Rules of Civil Procedure.

(4) The referee shall provide a report to the court detailing his findings. The court shall confirm, modify, or set aside the findings. If the findings are set aside, a new referee may be appointed in accordance with Section 78B-6-1210.

Enacted by Chapter 3, 2008 General Session

78B-6-1212. If partition prejudicial, sale in lieu thereof -- Partition by referees.

(1) If the court determines that the property or any part of it cannot be partitioned without great prejudice to the owners, the court may order the property sold.

(2) If the court determines that the property may be partitioned, it shall order a partition according to the respective rights of the parties determined by the court and appoint three referees to do the partition. The court shall also designate a portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

(3) If the action is for partition of a mining claim among the tenants in common, joint tenants, copartners, or parceners, the court, upon good cause shown by any

party or parties in interest, may, instead of ordering partition to be made in the manner as provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner provided in Subsections 78B-6-1213(5) through (11).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1213. Duties and powers of referees -- Procedure.

(1) In making the partition the referees must divide the property among the respective parties as determined by the court pursuant to the provisions of this part.

(2) The referees may designate the portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

(3) In all cases the court shall direct the referees making the partition to:

(a) allot the share of each of the parties owning an interest; and

(b) locate the share of each cotenant, including, if possible, the improvements made by the cotenant upon the property.

(4) The value of the improvements made by tenants in common shall be excluded from the valuation in making allotments if it can be done without material injury to the rights and interests of the other tenants in common.

(5) If the action is for partition of a mining claim, the court shall order the division of the claim by the referees not less than 20 nor more than 40 days from the date of the order, except by consent of all the parties in interest who have appeared in the action.

(6) On the day designated in the order the referees shall go to the property to be divided and proceed to divide the property. If the division requires more than one day to complete, the referees shall continue from day to day until the division is completed.

(7) Two or more of the tenants in common, joint tenants, copartners, or parceners may unite for the purposes of the division. The parties shall give the referees written notice of any unions before the referees begin the division. All who do not unite or give notice of separate action, shall, for the purposes of division, be considered to have united.

(8) The referees shall recognize:

(a) those named in the court order, their agents and attorneys;

(b) a guardian of a minor; and

(c) a guardian entitled to the custody and the management of the estate of an incompetent or incapacitated person.

(9) At the time and place of division one of the referees shall be selected to conduct the proceedings in the manner of public auction. The privilege of selecting first shall be offered to the party who agrees to take the smallest portion of the claim in proportion to that party's interest in the claim. Once the bids are closed, the referees shall measure and mark off, by distinct metes and bounds, the portion of the claim designated by the lowest bidder.

(10) Once the referees have marked off and set apart the interest of the lowest bidder, they shall offer to the remaining parties the privilege of selection as provided, and shall upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder.

(11) The bidding shall continue and the interest of the lowest bidder marked off until only one party in interest remains. The party remaining shall become the owner of the remainder of the claim not marked off and set apart for the other parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1214. Report of referees.

The referees shall provide a written report of their proceedings, specifying the manner in which they executed their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1215. Confirmation, modification, or vacation by court -- Effect of death of party before judgment.

(1) The court may confirm, change, modify, or set aside the report, and if necessary, appoint new referees. Upon the report being confirmed judgment must be rendered that the partition be effectual forever. The judgment shall be binding and conclusive on all persons:

(a) named as parties to the action and their legal representatives, who have at the time any interest in the property, whether as:

(i) owners in fee;

(ii) tenants for life or for years; or

(iii) entitled to the reversion, remainder, or the inheritance of the property or of any portion after the determination of a particular estate in it;

(b) who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

(c) interested in the property who may be unknown, to whom notice of the action for partition has been given by publications; and

(d) claiming from any parties or persons in Subsection (1)(c).

(2) A judgment is not invalid by reason of the death of any party before final judgment or decree, but the judgment or decree is as conclusive against the heirs, legal representatives, or assigns of the decedent as if it had been entered before the person's death.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1216. Tenant for years, less than 10, not affected by judgment.

The judgment does not affect tenants for years, less than 10, of the whole of the property which is the subject of the partition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1217. Referees' expenses and fees -- Apportionment.

The expenses of the referees, including those of the surveyor and his

assistants if employed, must be determined and allowed by the court, and the amount, together with the fees allowed by the court in its discretion to the referees, shall be apportioned equitably among the different parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1218. Liens on undivided interests -- Apportionment.

A lien on an undivided interest or estate of any of the parties shall only be a charge on the share assigned to the party after the share is charged with its just proportion of the costs of the partition in preference to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1219. Setoff of estate for life or for years.

If there is an estate for life or years in an undivided share of the whole property and only a portion of the property is ordered to be sold, the estate may be set off in any part of the property not ordered to be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1220. Proceeds of sale of encumbered property -- Disposition of.

The proceeds of the sale of encumbered property shall be applied under the direction of the court, as follows:

(1) to pay its just proportion of the general costs of the action;

(2) to pay the costs of the reference;

(3) to satisfy and cancel all recorded liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment;

(4) the residue among the owners of the property sold according to their respective shares therein.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1221. Lienholders required to exhaust other security first.

Any party to the action, who holds a lien upon the property or any portion of it and has other securities for the payment of the amount of the lien may be required by the court to exhaust the other securities before a distribution of the proceeds of sale. The court may also order a just reduction to be made from the amount of the lien on the property in the amount of the securities.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1222. Distribution of proceeds or securities.

The proceeds of sale and the securities taken by the referees shall be distributed by the referees to the persons entitled to them whenever the court directs. If no direction for distribution is given, all of the proceeds and securities must be paid

into the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1223. Determination of adverse claims.

When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known or unknown, are paid into court, the action may continue between the parties for the determination of their respective claims. Further evidence may be taken by the court or a referee at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1224. Sales at public auction -- Notice.

All sales of real property made by referees under this part shall be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that fact shall be stated also.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1225. Sales on credit -- Order for.

The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises. For that portion of which the purchase money is required, the court shall also order it to be invested for the benefit of unknown owners, minors or parties out of the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1226. Security for payment.

The referees may take separate mortgages and other securities;

(1) for the whole or convenient portions of the purchase money;

(2) on any part of the property directed by the court to be sold on credit;

(3) for the shares of any known owner of full age, in the name of the owner;

(4) for the shares of a minor, in the name of the guardian of the minor; and

(5) for other shares, in the name of the clerk of the court and his successors in office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1227. Compensation for interest of tenant for life or years.

A person entitled to a tenancy for life or years whose estate has been sold, is entitled to receive a sum as reasonable compensation for the estate. The person's consent to accept the sum shall be filed in writing with the clerk of the court. Upon the

filing of the consent, the clerk shall enter it in the minutes of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1228. Court determines reasonable compensation for tenant.

If consent is not given, filed, and entered as provided in Section 78B-6-1227 before a judgment of sale is rendered, the court shall determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of the estate, and order the amount paid to the party, or deposited in the court for the person, as the case may require.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1229. If tenant unknown.

If persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in the same manner as if they were known and had appeared.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1230. Protection of vested, contingent, or future rights.

In all cases of sales if it appears that any person has a vested, contingent, or future right or estate in any of the property sold, the court shall ascertain and settle the proportionate value of the contingent or vested right or estate, and direct the proportion of the proceeds of the sale to be invested, secured, or paid over in a manner that would protect the rights and interests of the parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1231. Terms of sales -- Separate sale of distinct parcels.

In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1232. Who may not be purchaser.

(1) A referee or any person for the referee's benefit may not be interested in any purchase.

(2) A guardian of a minor party may not be interested in the purchase of any real property which is the subject of an action under this part except for the benefit of the minor.

(3) All sales contrary to the provisions of this section are void.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1233. Report of referees to the courts of sales.

(1) Once the sale of the property or any portion ordered to be sold is complete, the referees shall file a report with the court.
(2) The report shall include:
(a) a description of the different parcels of land sold to each purchaser;
(b) the name of the purchaser;
(c) the price paid or secured;
(d) the terms and conditions of the sale; and
(e) the securities, if any, taken.
(3) The report shall be filed in the office of the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1234. Referees' deed on confirmation -- Disposition of proceeds.

If the sale is confirmed by the court, an order shall be entered directing the referees to execute conveyances and authorizing them to take securities pursuant to sale. The order may also give directions directing the disposition of the proceeds of the sale.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1235. Allowance on purchase price -- When interested party is purchaser.

If a party entitled to a share of the property, or a lienholder entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1236. Conveyance to be recorded -- Operates as a bar.

(1) The conveyances shall be recorded in the county where the property is located.
(2) The recording shall be a bar against:
(a) all persons interested in the property in any way, who have been named as parties in the action;
(b) all parties or persons who were unknown, if the summons was served by publication, and all persons claiming under them; and
(c) all persons having unrecorded deeds or liens at the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1237. Investment of sale proceeds for nonresidents or unknown parties.

When there are proceeds of a sale belonging to an unknown owner or to a person outside the state who has no legal representative inside the state, the proceeds shall be invested in bonds of the United States, this state, or a political

subdivision of the state for the benefit of the persons entitled the proceeds.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1238. Clerk of court to be custodian.

If the security of the proceeds of the sale is taken, or when an investment of any proceeds is made, it shall be done, except as otherwise provided, in the name of the clerk of the district court. The clerk of the court shall hold the security for the use and benefit of the parties interested, subject to an order of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1239. Distribution of securities to parties entitled.

If security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of, and payable to, the parties respectively entitled, and shall be delivered to the parties upon their receipt. The agreement and receipt shall be filed with the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1240. Investment of securities by court clerk -- Accounting.

The clerk of the court in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct. The clerk shall also deposit with the county treasurer all securities taken, and keep an account, in a book provided and kept for that purpose in the clerk's office, free to inspection by all persons, of investments and money received and their disposition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1241. Equalization.

(1) If a partition cannot be made equally among the parties according to their respective rights without prejudice to the rights and interests of some of them, and a partition is ordered, the courts may order compensation made by one party to another on account of the inequality.

(2) Compensation may not be required to be made to others by unknown owners or a minor, unless the court determines that the minor has sufficient personal property to make the payment and the minor's and the minor's interest will not be negatively affected.

(3) The court has the power in all cases to make compensatory adjustment among the parties according to the principles of equity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1242. Interests of minor -- Payment to guardian.

If the share of a minor is sold, the court may order the proceeds of the sale to be paid by the referee making the sale to the minor's general guardian or to the special guardian appointed for the minor in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1243. Partition -- Payment of costs -- Enforcement of judgment.

(1) The costs of partition, including reasonable attorney fees, expended by the plaintiff or any of the defendants for the common benefit, fees of referees and other disbursements shall be paid by the parties entitled to share in the lands divided, in proportion to their respective interests, and may be included and specified in the judgment. The costs shall be a lien on the several shares, and the judgment may be enforced by execution against the shares and against other property held by the respective parties.

(2) If litigation arises between some of the parties, the court may require the expenses of the litigation to be paid by the parties to the litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1244. One referee instead of three allowed by consent.

The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this part, and the single referee has all the powers, and may perform all the duties, required of the three referees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1245. Lien for costs and expenses advanced by one for benefit of all.

(1) The court shall allow expenses incurred, including attorney fees, in prosecuting or defending other actions or proceedings by any one of the tenants in common for the protection, confirmation or perfecting of the title, or setting the boundaries, or making a survey or surveys of the estate partitioned to be recovered by the party incurring the expenses.

(2) The court shall determine the amounts with interest from the date the expenditures occurred.

(3) The costs shall be:

(a) pleaded and allowed by the court;

(b) included in the final judgment;

(c) a lien upon the share of each tenant, in proportion to the tenant's interest; and

(d) enforced in the same manner as taxable costs of partition are taxed and collected.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1246. Abstract of title -- Costs and inspection.

(1) If the court determines that it was necessary to have an abstract of the title to the property to be partitioned created and the abstract has been procured by a party to the proceeding, the cost of the abstract, with interest from the date if its creation and availability for inspection by the respective parties to the action, shall be allowed and taxed.

(2) If the abstract is procured by the plaintiff before the commencement of the action the plaintiff shall file a notice with the complaint that an abstract of the title has been made and is available for the inspection and use of all the parties to the action. The notice shall state where the abstract will be available for inspection.

(3) If the plaintiff did not procure an abstract before commencing the action, and a defendant procures an abstract, the defendant shall, as soon as it has been directed it to be made, file a notice in the action with the clerk of the court, stating who is making the abstract and where it will be kept when finished.

(4) The court may direct who may have custody of the abstract.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1247. Interest on advances to be allowed.

Any disbursement made by a party under the direction of the court during the action shall accrue interest from the date it is made.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1301. Quiet title -- Action to determine adverse claim to property.

A person may bring an action against another person to determine rights, interests, or claims to or in personal or real property.

Enacted by Chapter 3, 2008 General Session

78B-6-1302. Definitions.

As used in this part:

(1) "Claimant" means a person who files a notice.

(2) "Guarantee" means an agreement by a claimant to pay an amount of damages:

(a) specified by the court;

(b) suffered as a result of the maintenance of a notice;

(c) to a person with an interest in the real property that is the subject of the notice; and

(d) if the requirements of Subsection 78B-6-1304(5) are met.

(3) "Notice" means a notice of the pendency of an action filed under Section 78B-6-1303.

Enacted by Chapter 3, 2008 General Session

78B-6-1303. Lis pendens -- Notice.

(1) Either party to an action affecting the title to, or the right of possession of, real property may file a notice of the pendency of the action with the county recorder in the county where the property or any portion of the property is located.

(2) The notice shall contain:

(a) the names of the parties;

(b) the object of the action or defense; and

(c) a description of the property affected in that county.

(3) From the time of filing the notice, a purchaser or encumbrancer of the property who may be affected by the action is considered to have constructive notice of the pendency of the action.

Enacted by Chapter 3, 2008 General Session

78B-6-1304. Motions related to a notice of the pendency of an action.

(1) Any time after a notice has been recorded pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:

(a) a party to the action; or

(b) a person with an interest in the real property affected by the notice.

(2) A court shall order a notice released if:

(a) the court receives a motion to release under Subsection (1); and

(b) the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim that is the subject of the notice.

(3) If a court releases a notice pursuant to this section, the claimant may not record another notice with respect to the same property without approval of the court in which the action is pending.

(4) Upon a motion by any person with an interest in the real property that is the subject of a notice, a court may require the claimant to give the moving party a guarantee as a condition of maintaining the notice:

(a) any time after a notice has been recorded; and

(b) regardless of whether the court has received an application to release under Subsection (1).

(5) A person who receives a guarantee under Subsection (4) may recover an amount not to exceed the amount of the guarantee upon a showing that:

(a) the claimant did not prevail on the real property claim; and

(b) the person seeking the guarantee suffered damages as a result of the maintenance of the notice.

(6) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:

(a) the nonprevailing party acted with substantial justification; or

(b) other circumstances make the imposition of attorney fees and costs unjust.

Enacted by Chapter 3, 2008 General Session

78B-6-1305. Disclaimer or default by defendant -- Costs.

The plaintiff may not recover costs of the action if:

(1) the defendant disclaims in his answer any interest or estate in the property; or

(2) allows judgment to be taken against him by refusing to answer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1306. Termination of title pending action -- Judgment -- Damages.

If the plaintiff demonstrates a right to recover at the time the action is brought, but his right terminates during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1307. Setoff or counterclaim for improvements made.

If permanent improvements have been made by a defendant, or persons under whom the defendant claims in good faith, the value of the improvements, except improvements made upon mining property, shall be allowed as a setoff or counterclaim against the damages recovered for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1308. Right of entry pending action for purposes of action.

The court in which an action is pending under this part or for damages for an injury to property may, on motion and upon notice to either party, for good cause shown, issue an order allowing a party the right to enter the property and take surveys and measurements including any tunnels, shafts, or drifts, even though entry must be made through other lands belonging to parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1309. Order for entry -- Liability for injuries.

The order shall describe the property, and a copy served on the owner or occupant. The party may enter the property with necessary surveyors and assistants, and may take surveys and measurements. The party shall be liable for any unnecessary injury done to the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1310. Mortgage not considered a conveyance -- Foreclosure necessary.

A mortgage of real property may not be considered a conveyance which would enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1311. Alienation pending action not to prejudice recovery.

An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by the person, either before or after the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1312. Actions respecting mining claims -- Proof of customs and usage admissible.

In actions respecting mining claims proof must be admitted of the customs, usages, or regulations established and in force in the district, bar, diggings, or camp in which the claim is located. The customs, usages, or regulations, if not in conflict with the laws of this state or of the United States, shall govern any decision in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1313. Temporary injunction in actions involving title to mining claims.

(1) The court may grant a postponement if:

(a) the court is satisfied that the delay is necessary for either or both parties to adequately prepare for trial; and

(b) the party requesting the postponement is not guilty of laches and is acting in good faith.

(2) The court may provide, as part of its order, that the party obtaining the postponement may not remove from the property which is the subject of the action any valuable quartz, rock, earth, or ores. The court may vacate the postponement order or hold the party in contempt if the order is violated.

Enacted by Chapter 3, 2008 General Session

78B-6-1314. Service of summons and conclusiveness of judgment.

If service of process is made upon unknown defendants by publication, the action shall proceed against the unknown persons in the same manner as against the defendants who are named and upon whom service is made by publication. Any unknown person who has or claims to have any right, title, estate, lien, or interest in the property, which is a cloud on the title and adverse to the plaintiff, who has been served as above, and anyone claiming under him, shall be concluded by any judgment in the action even though the unknown person may be under a legal disability.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1315. Judgment on default -- Court must require evidence -- Conclusiveness of judgment.

(1) If the summons has been served and the time for answering has expired, the court shall proceed to hear the cause as in other cases.

(2) The court may examine and determine the legality of the plaintiff's title and the title and claims of all the defendants and all unknown persons.

(3) The court may not enter any judgment by default against unknown defendants, but in all cases shall require evidence of plaintiff's title and possession and hear the evidence offered respecting the claims and title of any of the defendants. The court may enter judgment in accordance with the evidence and the law only after hearing all the evidence.

(4) The judgment shall be conclusive against all the persons named in the summons and complaint who have been served and against all unknown persons as stated in the complaint and summons who have been served by publication.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1401. Title.

This part is known as the "Citizen Participation in Government Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1402. Definitions.

As used in this part:

(1) "Action involving public participation in the process of government" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief to which this act applies.

(2) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

(3) "Moving party" means any person on whose behalf the motion is filed.

(4) "Process of government" means the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution.

(5) "Responding party" means any person against whom the motion described in Section 78B-6-1403 is filed.

Amended by Chapter 254, 2010 General Session

78B-6-1403. Applicability.

(1) A defendant in an action who believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1404. Procedures.

(1) On the filing of a motion for judgment on the pleadings:

(a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;

(b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant; and

(c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.

(2) The court shall grant the motion and dismiss the action upon a finding that the primary purpose of the action is to prevent, interfere with, or chill the moving party's proper participation in the process of government.

(3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1405. Counter actions -- Attorney fees -- Damages.

(1) A defendant in an action involving public participation in the process of government may maintain an action, claim, cross-claim, or counterclaim to recover:

(a) costs and reasonable attorney fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and

(b) other compensatory damages upon an additional demonstration that the action involving public participation in the process of government was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.

(2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1501. Title.

This part is known as the "Structured Settlement Protection Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1502. Definitions.

For purposes of this part:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Dependents" include:

(a) a payee's spouse;

(b) a payee's minor children; and

(c) all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(6) "Interested parties" means, with respect to any structured settlement:

(a) the payee;

(b) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(c) the annuity issuer;

(d) the structured settlement obligor; and

(e) any other party that has continuing rights or obligations under the structured settlement.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Subsection 78B-6-1503(5).

(8) "Payee" means an individual who:

(a) is receiving tax free payments under a structured settlement; and

(b) proposes to make a transfer of payment rights under the settlement.

(9) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code.

(11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

(12) "Settled claim" means the original tort claim resolved by a structured settlement.

(13) "Structured settlement" means an arrangement for periodic payment of

damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer if:

(a) (i) the payee is domiciled in this state; or

(ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;

(b) the structured settlement agreement is approved by a court in this state; or

(c) the structured settlement agreement is expressly governed by the laws of this state.

(17) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of:

(a) the structured settlement agreement;

(b) the annuity contract;

(c) any qualified assignment agreement; and

(d) any order or other approval of any court or other government authority that authorized or approved the structured settlement.

(18) (a) Subject to Subsection (18)(b), "transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.

(b) "Transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to:

(i) redirect the structured settlement payments to:

(A) the insured depository institution; or

(B) an agent or successor in interest to the insured depository institution; or

(ii) otherwise enforce a blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(20) (a) Subject to Subsection (20)(b), "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including:

(i) court filing fees;

(ii) attorney fees;

(iii) escrow fees;

(iv) lien recordation fees;

(v) judgment and lien search fees;

(vi) finders' fees;

(vii) commissions; and
(viii) other payments to a broker or other intermediary.
(b) "Transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.
(21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1503. Required disclosures to payee.

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 point, setting forth:
(1) the amounts and due dates of the structured settlement payments to be transferred;
(2) the aggregate amount of the payments;
(3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating the discounted present value;
(4) the gross advance amount;
(5) an itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any of the fees and disbursements;
(6) the net advance amount;
(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1504. Approval of transfers of structured settlement payment rights.

Direct or indirect transfer of structured settlement payment rights may not be effective and a structured settlement obligor or annuity issuer may not be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:
(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
(2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1505. Effects of transfer of structured settlement payment rights.

Following a transfer of structured settlement payment rights under this chapter:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(a) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the parties as a consequence of the transfer; and

(b) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this part.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1506. Procedure for approval of transfers.

(1) An application under this part for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court which approved the structured settlement agreement.

(2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 78B-6-1504, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with the notice:

(a) a copy of the transferee's application;

(b) a copy of the transfer agreement;

(c) a copy of the disclosure statement required under Section 78B-6-1503;

(d) a listing of each of the payee's dependents, together with each dependent's age;

(e) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(f) notification of the time and place of the hearing and notification of the

manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1507. General provisions -- Construction.

(1) The provisions of this part may not be waived by any payee.

(2) (a) Any transfer agreement entered into on or after May 6, 2002 by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state.

(b) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(3) The transfer of structured settlement payment rights may not extend to any payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee establishes and agrees to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(a) periodically confirming the payee's survival; and

(b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(4) A payee who proposes to make a transfer of structured settlement payment rights may not incur any of the following on the basis of a failure of the transfer to satisfy the requirements of this part:

(a) a penalty;

(b) a forfeiture of any application fee or other payment; or

(c) any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the requirements of this part.

(5) (a) This part may not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before May 6, 2002 is valid or invalid.

(b) This part does not apply to a transfer of payment rights under workers' compensation, as defined in Section 34A-2-422, that takes effect on or after April 30, 2007.

(6) Compliance with Section 78B-6-1503 and fulfillment of the conditions set forth in Section 78B-6-1504 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1508. Effective date.

This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after May 6, 2002; provided, however, that nothing contained in this part shall imply that any transfer under a transfer

agreement reached prior to that date is either effective or ineffective.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1601. Title.

This part is known as the "Social Host Liability Act."

Enacted by Chapter 187, 2009 General Session

78B-6-1602. Definitions.

As used in this part:

(1) "Alcoholic beverage" is as defined in Section 32B-1-102.

(2) "Emergency response provider" means an individual providing services on behalf of:

(a) a law enforcement agency;

(b) a fire suppression agency; or

(c) another agency or a political subdivision of the state.

(3) "Law enforcement officer" is as defined in Section 53-13-103.

(4) "Local entity" means the political subdivision for which an emergency response provider provides emergency services.

(5) "Minor" means an individual under the age of 18 years old.

(6) (a) Subject to Subsection (6)(b), "response costs" means the actual costs directly associated with an emergency response provider responding to, remaining at, or otherwise dealing with an underage drinking gathering, including:

(i) the costs of medical treatment to or for an emergency response provider injured because of an activity described in this Subsection (6)(a); and

(ii) the cost of repairing damage to equipment or property of a local entity that is attributable to an activity described in this Subsection (6)(a).

(b) "Response costs" does not include:

(i) the salary and benefits of an emergency response provider for the amount of time spent responding to, remaining at, or otherwise dealing with an underage drinking gathering; or

(ii) the administrative costs attributable to an activity described in Subsection (6)(b)(i).

(7) "Underage drinking gathering" means a gathering of two or more individuals:

(a) at which an individual knowingly serves, aids in the service of, or allows the service of an alcoholic beverage to an underage person; and

(b) to which an emergency response provider is required to respond, except for a response related solely to providing medical care at the location of the gathering.

(8) "Underage person" means an individual under the age of 21 years old.

Amended by Chapter 276, 2010 General Session

78B-6-1603. Citation -- Civil penalty.

(1) An individual may not knowingly conduct, aid, or allow an underage

drinking gathering.

(2) A law enforcement officer may issue a written citation to an individual who violates Subsection (1).

(3) An individual issued a citation under this section is subject to a civil penalty equal to the sum of:

(a) (i) a fine of $250 for a first citation; or

(ii) double the fine imposed for an immediately preceding citation for each subsequent citation; and

(b) the response costs of the underage drinking gathering, not to exceed $1,000.

(4) Two or more individuals who violate Subsection (1) for the same underage drinking gathering are jointly and severally liable under this section for response costs attributable to the underage drinking gathering.

(5) An individual who violates Subsection (1) is liable under this part regardless of whether the individual is present at an underage drinking gathering.

(6) If a minor is issued a citation under this section, the minor's parent or legal guardian may not be held liable for an amount of civil penalty imposed on the minor as a result of the minor's citation.

Enacted by Chapter 187, 2009 General Session

78B-6-1604. Collection of civil penalty.

(1) A local entity shall mail a notice of the civil penalty amount for which an individual is liable by first-class or certified mail within 14 days of the day after which a citation is issued under Section 78B-6-1603. The notice shall contain the following information:

(a) the name of the one or more individuals being held liable for the payment of the civil penalty;

(b) the address of the location where the underage drinking gathering occurs;

(c) the date and time of the response;

(d) the name of an emergency service provider who responds to the underage drinking gathering; and

(e) an itemized list of the response costs for which the one or more individuals are liable.

(2) (a) An individual liable under Section 78B-6-1603 shall remit payment of a civil penalty to the local entity that provides the notice required by Subsection (1) within 90 days of the date on which the notice is sent.

(b) Notwithstanding Subsection (2)(a), a local entity may:

(i) reduce the amount of a civil penalty; or

(ii) negotiate a payment schedule for a civil penalty.

(3) (a) A civil penalty imposed under this section may be appealed as provided in Section 78B-6-1606.

(b) Notwithstanding Subsection (4), the payment of a civil payment is stayed upon an appeal made pursuant to Section 78B-6-1606.

(4) (a) The amount of a civil penalty owed under this part is considered a debt owed to the local entity by the individual held liable under this part for an underage

drinking gathering.

(b) After the notice required by Subsection (1), an individual owing a civil penalty is liable in a civil action brought in the name of the local entity for recovery of:

(i) the civil penalty; and

(ii) reasonable attorney fees.

Enacted by Chapter 187, 2009 General Session

78B-6-1605. Reservation of legal options -- Ordinances.

(1) (a) This part may not be construed as a waiver by a local entity of a right to seek reimbursement for actual costs of response services through another legal remedy or procedure.

(b) The procedure provided for in this part is in addition to any other civil or criminal statute.

(c) This part does not limit the authority of a law enforcement officer or private citizen to make an arrest for a criminal offense arising out of conduct regulated by this part.

(2) A local entity may impose by ordinance a stricter provision related to the conduct of an underage drinking gathering, including the imposition of a different civil penalty amount, except that the ordinance shall provide that a civil penalty for an underage drinking gathering may only be imposed by a local entity for which an emergency response provider provides services at the underage drinking gathering.

Enacted by Chapter 187, 2009 General Session

78B-6-1606. Appeals.

An individual upon whom is imposed a civil penalty under this part may appeal the imposition of the civil penalty pursuant to the procedures used by the local entity for appealing a traffic citation or a violation of an ordinance.

Enacted by Chapter 187, 2009 General Session

78B-6-1701. Cause of action for identity theft.

(1) A petitioner who has been injured by a violation of Section 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, may recover from the perpetrator:

(a) compensatory damages in the amount of $1,000 or up to three times the amount of actual damages, whichever is greater;

(b) attorney fees; and

(c) court costs.

(2) Actual damages may include:

(a) replacement or reissuance costs for checks and any personal identification documents;

(b) the value of the petitioner's time spent:

(i) repairing their credit history or rating; and

(ii) attending civil or administrative hearings necessary to resolve any debt,

lien, or other obligation arising from the offense;

(c) lost wages; and

(d) any other verifiable costs the court may choose to include.

(3) The court may award punitive damages in addition to compensatory damages.

(4) A perpetrator who is not tried or found not guilty of a violation of Section 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, may be found liable under this section if the court finds by a preponderance of the evidence that the perpetrator participated in a violation and the petitioner was injured as a result.

(5) (a) A perpetrator who is found guilty of a violation of Section 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, shall be found liable under this section.

(b) If restitution was ordered in the criminal action, the amount ordered shall be deducted from any damages awarded under this section.

Enacted by Chapter 143, 2010 General Session

78B-6-1801. Title.

This part is known as the "Renewal of Judgment Act."

Enacted by Chapter 22, 2011 General Session

78B-6-1802. Renewal by motion.

A court of record may renew a judgment issued by a court if:

(1) a motion is filed within the original action;

(2) the motion is filed before the statute of limitations on the original judgment expires;

(3) the motion includes an affidavit that contains an accounting of the original judgment and all postjudgment payments, credits, and other adjustments which are provided for by law or are contained within the original judgment;

(4) the facts in the supporting affidavit are determined by the court to be accurate and the affidavit affirms that notice was sent to the most current address known for the judgment debtor;

(5) the time for responding to the motion has expired; and

(6) the fee required by Subsection 78A-2-301(1)(l) has been paid to the clerk of the court.

Enacted by Chapter 22, 2011 General Session

78B-6-1803. Notice.

Notice of a motion for renewal of judgment is served in accordance with the Rules of Civil Procedure and opposition may be filed pursuant to the rules.

Enacted by Chapter 22, 2011 General Session

78B-6-1804. Date and duration of judgment.

Upon granting a motion for the renewal of judgment, the court shall enter an order which renews the original judgment from the date of entry of the order or from the scheduled expiration date of the original order, whichever occurs first, for the same amount of time as the original judgment.

Enacted by Chapter 22, 2011 General Session

78B-6-1901. Title -- Purpose.

(1) This part is known as the "Distribution of Bad Faith Patent Infringement Letters Act."

(2) The Legislature acknowledges that it is preempted from passing any law that conflicts with federal patent law. However, this part seeks to protect Utah businesses from the use of demand letters containing abusive and bad faith assertions of patent infringement, and build Utah's economy, while at the same time respecting federal law and not interfering with legitimate patent enforcement efforts.

Enacted by Chapter 310, 2014 General Session

78B-6-1902. Definitions.

As used in this part:

(1) (a) "Demand letter" means a letter, email, or other written communication directed to a target and asserting or claiming that the target has engaged in patent infringement.

(b) "Demand letter" does not include a complaint filed in a United States District Court asserting patent infringement or discovery responses or other papers filed in an action.

(2) "Target" means a person or entity residing in, incorporated in, or organized under the laws of this state that has received a demand letter and includes the customers, distributors, and agents of the person or entity.

(3) "Sponsor" means the party or parties responsible for distribution of a demand letter.

Enacted by Chapter 310, 2014 General Session

78B-6-1903. Prohibition against distribution of demand letters containing bad faith assertions of patent infringement.

(1) A sponsor may not distribute a demand letter to a target that includes a bad faith assertion of patent infringement.

(2) A court may consider the following factors as evidence in determining whether a sponsor has or has not distributed a demand letter containing a bad faith assertion of patent infringement, but no one factor may be considered conclusive as to whether a demand letter contains a bad faith assertion of patent infringement:

(a) the demand letter does not contain all of the following information:

(i) the patent numbers of the patent or patents being asserted;

(ii) the name and address of the current patent owner or owners and any other

person or entity having the right to enforce or license the patent;

(iii) the name and address of all persons and entities holding a controlling interest in the persons and entities identified in Subsection (2)(a)(ii) of this section;

(iv) the identification of at least one claim of each asserted patent that is allegedly infringed;

(v) for each claim identified in Subsection (2)(a)(iv), a description of one or more allegedly infringing products, including the make, model number, and other specific identifying indicia of allegedly infringing products, services, or methods made, used, offered for sale, sold, imported or performed by the target, provided in sufficient detail to allow the target to assess the merits of the assertion of patent infringement; and

(vi) identification of each judicial or administrative proceeding pending as of the date of the demand letter where the validity of the asserted patent or patents is under challenge; or

(b) the demand letter contains any of the following:

(i) an assertion of patent infringement based on a patent or a claim of a patent that has been previously held invalid or unenforceable in a final judicial or administrative decision from which no appeal is possible;

(ii) an assertion that a complaint has been filed alleging that the target has infringed the patent when no complaint has, in fact, been filed;

(iii) an assertion of infringement based on acts occurring after the asserted patent or claim at issue has expired or been held invalid or unenforceable;

(iv) an assertion of infringement of a patent that the sponsor does not own or have the right to enforce or license; or

(v) an assertion that the amount of compensation demanded will increase if the target retains counsel to defend against the assertions in the demand letter or if the target does not pay the sponsor within a period of 60 days or less;

(vi) a false or misleading statement; or

(vii) the demand letter demands payment of a license fee or response within an unreasonably short period of time depending on the number and complexity of the claims.

(3) A court may consider the following factors as evidence to mitigate a conclusion that a sponsor has distributed a demand letter containing a bad faith assertion of patent infringement:

(a) the demand letter contains the information described in Subsection (2)(a);

(b) the demand letter lacks the information described in Subsection (2)(a) and when the target requests the information, the sponsor provides the information within a reasonable period of time;

(c) the sponsor engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy;

(d) the sponsor has made a substantial investment in the practice of the patent or in the production or sale of a product or item covered by the patent; and

(e) the sponsor is:

(i) the inventor or joint inventor of the patent or the original assignee of the inventor or joint inventor, or an entity owned by or affiliated with the original assignee; or

(ii) an institution of higher education or a technology transfer organization owned by or affiliated with an institution of higher education.

Enacted by Chapter 310, 2014 General Session

78B-6-1904. Action -- Enforcement -- Remedies -- Damages.

(1) A target who has received a demand letter asserting patent infringement in bad faith, or a person aggrieved by a violation of this part, may bring an action in district court. The court may award the following remedies to a target who prevails in an action brought pursuant to this part:

(a) equitable relief;

(b) actual damages;

(c) costs and fees, including reasonable attorney fees; and

(d) punitive damages in an amount to be established by the court, of not more than the greater of $50,000 or three times the total of damages, costs, and fees.

(2) The attorney general may conduct civil investigations and bring civil actions pursuant to this part. In an action brought by the attorney general under this part, the court may award or impose any relief it considers prudent, including the following:

(a) equitable relief;

(b) statutory damages of not less than $750 per demand letter distributed in bad faith; and

(c) costs and fees, including reasonable attorney fees, to the attorney general.

(3) This part may not be construed to limit other rights and remedies available to the state or to any person under any other law.

(4) A demand letter or assertion of a patent infringement that includes a claim for relief arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

(5) The attorney general shall report annually to the Executive Appropriations Committee regarding the number of investigations and actions brought under this part. The report shall include:

(a) the number of investigations commenced;

(b) the number of actions brought under the provisions of this part;

(c) the current status of actions brought under Subsection (5)(b); and

(d) final resolution of actions brought under this part, including any recovery under Subsection (2).

Enacted by Chapter 310, 2014 General Session

78B-6-1905. Bond.

(1) Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a sponsor has made a bad faith assertion of patent infringement in a demand letter in violation of this part, the court shall require the sponsor to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim under this part and amounts reasonably likely to be recovered under Subsections 78B-6-1904(1)(b) and (c), conditioned upon payment of any amounts finally determined to be due to the target.

(2) A hearing on the appropriateness and amount of a bond under this section shall be held if either party requests it.

(3) A bond ordered pursuant to this section may not exceed $250,000. The court may waive the bond requirement if it finds the sponsor has available assets equal to the amount of the proposed bond or for other good cause shown.

Enacted by Chapter 310, 2014 General Session

78B-7-101. Title.

This part is known and may be cited as the "Cohabitant Abuse Act."

Enacted by Chapter 3, 2008 General Session

78B-7-102. Definitions.

As used in this chapter:

(1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has or had one or more children in common with the other party;

(e) is the biological parent of the other party's unborn child; or

(f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

(a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

(4) "Court clerk" means a district court clerk.

(5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

(7) "Foreign protection order" is as defined in Section 78B-7-302.

(8) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(10) "Protective order" means an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter.

Amended by Chapter 348, 2013 General Session

78B-7-103. Abuse or danger of abuse -- Protective orders.

(1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises in an effort to avoid further abuse.

(2) A petition for a protective order may be filed under this chapter regardless of whether an action for divorce between the parties is pending.

(3) A petition seeking a protective order may not be withdrawn without approval of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-104. Venue of action.

(1) The district court has jurisdiction of any action brought under this chapter.

(2) An action brought pursuant to this chapter shall be filed in the county where either party resides or in which the action complained of took place.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-105. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 78B-7-106(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in

an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (1);

(b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

(c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to provide that service, but the court clerk's office is responsible to see that the service is provided;

(d) information regarding the means available for the service of process;

(e) a list of legal service organizations that may represent the petitioner in an action brought under this chapter, together with the telephone numbers of those organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation of the use of transportation order forms when necessary.

(3) No charges may be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte protective order;

(c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or

(d) fees for service of a petition, ex parte protective order, or protective order.

(4) A petition for an order of protection shall be in writing and verified.

(5) (a) All orders for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).

(b) Each protective order issued, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

(c) Each protective order issued in accordance with this part, including protective orders issued ex parte, shall include the following language:

"NOTICE TO PETITIONER: The court may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the

protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent."

Amended by Chapter 232, 2009 General Session

78B-7-106. Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

(e) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) grant to the petitioner temporary custody of any minor children of the parties;

(g) order the appointment of an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902;

(h) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

(i) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.

(3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

(a) grant the relief described in Subsection (2); and

(b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.

(4) Following the protective order hearing, the court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

(c) transmit electronically, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and

(d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113.

(5) (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:

(i) criminal offenses are those under Subsections (2)(a) through (e), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

(ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a) as it refers to Subsections (2)(f), (h), and (i).

(b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.

(c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.

(6) The protective order shall include:

(a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description; and

(c) a statement advising the petitioner that:

(i) after two years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;

(ii) the petitioner should, within the 30 days prior to the end of the two-year period, advise the court of the petitioner's current address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent.

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part

4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Amended by Chapter 267, 2014 General Session

78B-7-107. Hearings on ex parte orders.

(1) (a) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.

(b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise extended by the court. Extensions beyond the 20-day period may not by granted unless:

(i) the petitioner is unable to be present at the hearing;

(ii) the respondent has not been served;

(iii) the respondent has had the opportunity to present a defense at the

hearing;

(iv) the respondent requests that the ex parte order be extended; or

(v) exigent circumstances exist.

(c) Under no circumstances may an ex parte order be extended beyond 180 days from the date of initial issuance.

(d) If at that hearing the court issues a protective order, the ex parte protective order remains in effect until service of process of the protective order is completed.

(e) A protective order issued after notice and a hearing is effective until further order of the court.

(f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.

(2) Upon a hearing under this section, the court may grant any of the relief described in Section 78B-7-106.

(3) When a court denies a petition for an ex parte protective order or a petition to modify an order for protection ex parte, upon the request of the petitioner, the court shall set the matter for hearing and notify the petitioner and serve the respondent.

(4) A respondent who has been served with an ex parte protective order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a) by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice of hearing on that motion shall be personally served on the petitioner at least two days prior to the hearing on the motion to vacate.

Amended by Chapter 34, 2010 General Session

78B-7-108. Mutual protective orders prohibited.

(1) A court may not grant a mutual order or mutual orders for protection to opposing parties, unless each party:

(a) has filed an independent petition against the other for a protective order, and both petitions have been served;

(b) makes a showing at a due process protective order hearing of abuse or domestic violence committed by the other party; and

(c) demonstrates the abuse or domestic violence did not occur in self-defense.

(2) If the court issues mutual protective orders, the circumstances justifying those orders shall be documented in the case file.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-109. Continuing duty to inform court of other proceedings -- Effect of other proceedings.

(1) At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in juvenile court, and each criminal case involving either party, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.

(2) (a) An order for protection issued pursuant to this chapter is in addition to and not in lieu of any other available civil or criminal proceeding.

(b) A petitioner is not barred from seeking a protective order because of other pending proceedings.

(c) A court may not delay granting relief under this chapter because of the existence of a pending civil action between the parties.

(3) A petitioner may omit his or her address from all documents filed with the court under this chapter, but shall separately provide the court with a mailing address that is not to be made part of the public record, but that may be provided to a peace officer or entity for service of process.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-110. No denial of relief solely because of lapse of time.

The court may not deny a petitioner relief requested pursuant to this chapter solely because of a lapse of time between an act of domestic violence or abuse and the filing of the petition for an order of protection.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-111. Prohibition of court-ordered or court-referred mediation.

In any case brought under the provisions of this chapter, the court may not order the parties into mediation for resolution of the issues in a petition for an order for protection.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-112. Division of Child and Family Services -- Development and assistance of volunteer network.

(1) The Division of Child and Family Services within the Department of Human Services shall, either directly or by contract:

(a) develop a statewide network of volunteers and community resources to support, assist, and advocate on behalf of victims of domestic violence;

(b) train volunteers to provide clerical assistance to persons seeking orders for protection under this chapter;

(c) coordinate the provision of volunteer services with Utah Legal Services and the Legal Aid Society; and

(d) assist local government officials in establishing community based support systems for victims of domestic violence.

(2) Volunteers shall provide additional nonlegal assistance to victims of domestic violence, including providing information on the location and availability of shelters and other community resources.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-113. Statewide domestic violence network -- Peace officers' duties

-- Prevention of abuse in absence of order -- Limitation of liability.

(1) (a) Law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene of an alleged violation of a protective order or pretrial criminal no contact order have immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network by the provisions of this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or Section 77-38-3. Those officers shall use every reasonable means to enforce the court's order, in accordance with the requirements and procedures of this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.

(b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section 53-10-103, shall provide for a single, statewide network containing:

(i) all orders for protection issued by a court of this state; and

(ii) all other court orders or reports of court action that are required to be available on the network under this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.

(c) The entities described in Subsection (1)(b) may utilize the same mechanism as the statewide warrant system, described in Section 53-10-208.

(d) All orders and reports required to be available on the network shall be available within 24 hours after court action. If the court that issued the order is not part of the state court computer system, the orders and reports shall be available on the network within 72 hours.

(e) The information contained in the network shall be available to a court, law enforcement officer, or agency upon request.

(2) When any peace officer has reason to believe a cohabitant or child of a cohabitant is being abused, or that there is a substantial likelihood of immediate danger of abuse, although no protective order has been issued, that officer shall use all reasonable means to prevent the abuse, including:

(a) remaining on the scene as long as it reasonably appears there would otherwise be danger of abuse;

(b) making arrangements for the victim to obtain emergency medical treatment;

(c) making arrangements for the victim to obtain emergency housing or shelter care;

(d) explaining to the victim his or her rights in these matters;

(e) asking the victim to sign a written statement describing the incident of abuse; or

(f) arresting and taking into physical custody the abuser in accordance with the provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(3) No person or institution may be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this chapter, so long as that person acted in good faith and without malice.

Amended by Chapter 196, 2013 General Session

78B-7-114. Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-115. Dismissal of protective order.

(1) A protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future abuse. In determining whether the petitioner no longer has a reasonable fear of future abuse, the court shall consider the following factors:

(a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;

(b) whether the protective order was violated during the time it was in force;

(c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;

(d) counseling or therapy undertaken by either party;

(e) impact on the well-being of any minor children of the parties, if relevant; and

(f) any other factors the court considers relevant to the case before it.

(2) The court may amend or dismiss a protective order issued in accordance with this part that has been in effect for at least one year if it finds that:

(a) the basis for the issuance of the protective order no longer exists;

(b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;

(c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable fear of the respondent; and

(d) the respondent has not been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order, and there are no unresolved charges involving violent conduct still on file with the court.

(3) The court shall enter sanctions against either party if the court determines that either party acted:

(a) in bad faith; or

(b) with intent to harass or intimidate either party.

(4) Notice of a motion to dismiss a protective order shall be made by personal service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil Procedure.

(5) If a divorce proceeding is pending between the parties to a protective order, the protective order shall be dismissed when the court issues a decree of divorce for the parties if:

(a) the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing; and

(b) the court specifically finds that the order need not continue.

(6) When the court dismisses a protective order, the court shall immediately issue an order of dismissal to be filed in the protective order action and transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section 78B-7-113.

Amended by Chapter 232, 2009 General Session

78B-7-116. Full faith and credit for foreign protection orders.

(1) A foreign protection order is enforceable in this state as provided in Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) (a) A person entitled to protection under a foreign protection order may file the order in any district court by filing with the court a certified copy of the order. A filing fee may not be required.

(b) The person filing the foreign protection order shall swear under oath in an affidavit, that to the best of the person's knowledge the order is presently in effect as written and the respondent was personally served with a copy of the order.

(c) The affidavit described in Subsection (2)(b) shall be in the form adopted by the Administrative Office of the Courts, consistent with its responsibilities to develop and adopt forms under Section 78B-7-105.

(d) The court where a foreign protection order is filed shall transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113.

(e) Upon inquiry by a law enforcement agency, the clerk of the district court shall make a copy of the foreign protection order available.

(f) After a foreign protection order is filed, the district court shall furnish a certified copy of the order to the person who filed the order.

(g) A filed foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the statewide domestic violence network described in Section 78B-7-113.

(3) Law enforcement personnel may:

(a) rely upon a certified copy of any foreign protection order which has been provided to the peace officer by any source;

(b) rely on the statement of the person protected by the order that the order is in effect and the respondent was personally served with a copy of the order; or

(c) consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(4) A violation in Utah of a foreign protection order is subject to the same penalties as the violation of a protective order issued in Utah.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-201. Definitions.

As used in this chapter:

(1) "Abuse" means physical abuse or sexual abuse.

(2) "Court" means the district court or juvenile court.

(3) All other terms have the same meaning as defined in Section 78A-6-105.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-202. Petition -- Ex parte determination -- Guardian ad litem -- Referral to division.

(1) Any interested person may file a petition for a protective order on behalf of a child who is being abused or is in imminent danger of being abused. The petitioner shall first make a referral to the division.

(2) Upon the filing of a petition, the clerk of the court shall:

(a) review the records of the juvenile court, the district court, and the management information system of the division to find any petitions, orders, or investigations related to the child or the parties to the case;

(b) request the records of any law enforcement agency identified by the petitioner as having investigated abuse of the child; and

(c) identify and obtain any other background information that may be of assistance to the court.

(3) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor is being abused or is in imminent danger of being abused. If so, the court shall enter an ex parte child protective order.

(4) The court may appoint an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902.

Amended by Chapter 267, 2014 General Session

78B-7-203. Hearing.

(1) If an ex parte order is granted, the court shall schedule a hearing within 20 days after the ex parte determination. If an ex parte order is denied, the court, upon the request of the petitioner, shall schedule a hearing within 20 days after the ex parte determination.

(2) The petition, ex parte child protective order, and notice of hearing shall be served on the respondent, the minor's parent or guardian, and, if appointed, the guardian ad litem. The notice shall contain:

(a) the name and address of the person to whom it is directed;

(b) the date, time, and place of the hearing;

(c) the name of the minor on whose behalf a petition is being brought; and

(d) a statement that a person is entitled to have an attorney present at the hearing.

(3) The court shall provide an opportunity for any person having relevant knowledge to present evidence or information. The court may hear statements by counsel.

(4) An agent of the division served with a subpoena in compliance with the Utah Rules of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

(5) If the court determines, based on a preponderance of the evidence, that the minor is being abused or is in imminent danger of being abused, the court shall

enter a child protective order. With the exception of the provisions of Section 78A-6-323, a child protective order does not constitute an adjudication of abuse, neglect, or dependency under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

Amended by Chapter 34, 2010 General Session

78B-7-204. Content of order.

(1) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is a class A misdemeanor under Section 77-36-2.4:

(a) enjoin the respondent from threatening to commit or committing abuse of the minor;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the minor, directly or indirectly;

(c) prohibit the respondent from entering or remaining upon the residence, school, or place of employment of the minor and the premises of any of these or any specified place frequented by the minor;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the minor, prohibit the respondent from purchasing, using, or possessing a firearm or other specified weapon; and

(e) determine ownership and possession of personal property and direct the appropriate law enforcement officer to attend and supervise the petitioner's or respondent's removal of personal property.

(2) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is contempt of court:

(a) determine temporary custody of a minor who is the subject of the petition;

(b) determine parent-time with a minor who is the subject of the petition, including denial of parent-time if necessary to protect the safety of the minor, and require supervision of parent-time by a third party;

(c) determine support in accordance with Title 78B, Chapter 12, Utah Child Support Act; and

(d) order any further relief the court considers necessary to provide for the safety and welfare of the minor.

(3) A child protective order and an ex parte child protective order shall include:

(a) a statement that violation of a criminal provision is a class A misdemeanor and violation of a civil provision is contempt of court; and

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description.

(4) A child protective order shall include:

(a) the date the order expires;

(b) a statement that the address provided by the petitioner will not be made available to the respondent; and

(c) the following statement: "Respondent was afforded notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence

Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 115, 2008 General Session

78B-7-205. Service -- Income withholding -- Expiration.

(1) If the court enters an ex parte child protective order or a child protective order, the court shall:

(a) make reasonable efforts to ensure that the order is understood by the petitioner and the respondent, if present;

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered, transmit electronically a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section 78B-7-113.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section 78B-7-113 in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

(5) After notice, as provided in Rule 4 of the Utah Rules of Civil Procedure, and hearing, a court may modify or vacate a child protective order with a showing of substantial and material change in circumstances.

(6) The child protective order expires 150 days after the date of the order unless a different date is set by the court. The court may not set a date more than 150 days after the date of the order without a finding of good cause. The court may review and extend the expiration date, but may not extend it to more than 150 days after the date of the order without a finding of good cause.

(7) Notwithstanding Subsections (5) and (6), unless the judge orders otherwise all child protective orders expire when the subject of the order is 18 years of age, unless the judge vacates the order earlier.

Amended by Chapter 208, 2011 General Session

78B-7-206. Statewide domestic violence network.

The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, shall post ex parte child protective orders, child protective orders, and any modifications to them on the statewide network established in Section 78B-7-113.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-207. Forms and assistance -- No fees.

(1) The Administrative Office of the Courts shall adopt and make available uniform forms for petitions and orders conforming to this part. The forms shall notify the petitioner that:

(a) a knowing falsehood in any statement under oath may subject the petitioner to felony prosecution;

(b) the petitioner may provide a copy of the order to the principal of the minor's school; and

(c) the petitioner may enforce a court order through the court if the respondent violates or fails to comply with a provision of the order.

(2) If the petitioner is not represented, the clerk of the court shall provide, directly or through an agent:

(a) the forms adopted pursuant to Subsection (1);

(b) clerical assistance in completing the forms and filing the petition;

(c) information regarding means for service of process;

(d) a list of organizations with telephone numbers that may represent the petitioner; and

(e) information regarding the procedure for transporting a jailed or imprisoned respondent to hearings, including transportation order forms when necessary.

(3) No fee may be imposed by a court, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining copies necessary for service or delivery to law enforcement officials; or

(c) service of a petition, ex parte child protective order, or child protective order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-301. Title.

This part is known as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-302. Definitions.

As used in this part:

(1) "Foreign protection order" means a protection order issued by a tribunal of

another state.

(2) "Issuing state" means the state whose tribunal issues a protection order.

(3) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) "Protected individual" means an individual protected by a protection order.

(5) "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family-violence, or anti-stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(6) "Respondent" means the individual against whom enforcement of a protection order is sought.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(8) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-303. Judicial enforcement of order.

(1) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(2) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(3) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(4) A foreign protection order is valid if it:

(a) identifies the protected individual and the respondent;

(b) is currently in effect;

(c) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(d) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order

ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(5) A foreign protection order valid on its face is prima facie evidence of its validity.

(6) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(7) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(a) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(b) the tribunal of the issuing state made specific findings in favor of the respondent.

(8) (a) The juvenile court has jurisdiction to enforce foreign protection orders under this section over which the juvenile court would have had jurisdiction if the order had been originally sought in this state.

(b) The district court has jurisdiction to enforce foreign protection orders under this section:

(i) over which the district court would have had jurisdiction if the order had been originally sought in this state; or

(ii) that are not under the jurisdiction of the juvenile court under Subsection (8)(a).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-304. Nonjudicial enforcement of order.

(1) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(2) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(3) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(4) Registration or filing of an order in this state is not required for the

enforcement of a valid foreign protection order pursuant to this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-305. Registration of order.

Any individual may register a foreign protection order in this state under Section 78B-7-116.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-306. Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-307. Other remedies.

A protected individual who pursues remedies under this part is not precluded from pursuing other legal or equitable remedies against the respondent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-308. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-309. Severability clause.

If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-310. Transitional provision.

This part applies to protection orders issued before July 1, 2006 and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2006. A request for enforcement of a foreign protection order made on or after July 1, 2006 for violations of a foreign protection order occurring before July 1, 2006 is

governed by this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-7-401. Title.

(1) This part is known as the "Dating Violence Protection Act."

(2) This part is not related to marriage.

Enacted by Chapter 179, 2013 General Session

78B-7-402. Definitions.

As used in this part:

(1) "Abuse" means intentionally or knowingly:

(a) causing or attempting to cause physical harm to a dating partner; or

(b) placing a dating partner in reasonable fear of imminent physical harm.

(2) (a) "Dating partner" means a person who:

(i) (A) is an emancipated person under Section 15-2-1 or Title 78A, Chapter 6, Part 8, Emancipation; or

(B) is 18 years of age or older; and

(ii) is, or has been, in a dating relationship with the other party.

(b) "Dating partner" does not include an intimate partner, as defined in federal law in Title 18 U.S.C. Section 921.

(3) (a) "Dating relationship" means a social relationship of a romantic or intimate nature, or a relationship which has romance or intimacy as a goal by one or both parties, regardless of whether the relationship involves sexual intimacy.

(b) "Dating relationship" does not mean casual fraternization in a business, educational, or social context.

(c) In determining, based on a totality of the circumstances, whether a dating relationship exists:

(i) all relevant factors shall be considered, including:

(A) whether the parties developed interpersonal bonding above a mere casual fraternization;

(B) the length of the parties' relationship;

(C) the nature and the frequency of the parties' interactions, including communications indicating that the parties intended to begin a dating relationship;

(D) the ongoing expectations of the parties, individual or jointly, with respect to the relationship;

(E) whether, by statement or conduct, the parties demonstrated an affirmation of their relationship to others; and

(F) whether other reasons exist that support or detract from a finding that a dating relationship exists; and

(ii) it is not necessary that all, or a particular number, of the factors described in Subsection (3)(c)(i) are found to support the existence of a dating relationship.

(4) "Dating violence" means:

(a) any criminal offense involving violence or physical harm, or threat of violence or physical harm, when committed by a person against a dating partner of

the person; or

(b) any attempt, conspiracy, or solicitation by a person to commit a criminal offense involving violence or physical harm against a dating partner of the person.

(5) "Dating violence protective order" means an order issued pursuant to this part subsequent to a hearing on the petition, as described in Section 78B-7-403.

(6) "Ex parte dating violence protective order" means an order issued without notice to the respondent, in accordance with the requirements of this part.

(7) "Protective order" means:

(a) a dating violence protective order; or

(b) an ex parte dating violence protective order.

Enacted by Chapter 179, 2013 General Session

78B-7-403. Abuse or danger of abuse -- Dating violence protective orders.

(1) A person may seek a protective order if the person is subjected to, or there is a substantial likelihood the person will be subjected to:

(a) abuse by a dating partner of the person; or

(b) dating violence by a dating partner of the person.

(2) A person may seek an order described in Subsection (1) whether or not the person has taken other action to end the relationship.

(3) A person seeking a protective order may include another party in the petition for a protective order if:

(a) the person seeking the order meets the requirements of Subsection (1); and

(b) the other party:

(i) is a family or household member of the person seeking the protective order; and

(ii) there is a substantial likelihood the other party will be subjected to abuse by the dating partner of the person.

(4) A person seeking a protective order under this part shall, to the extent possible, provide information to facilitate identification of the respondent, including a name, Social Security number, driver license number, date of birth, address, telephone number, and physical description.

(5) A petition seeking a protective order under this part may not be withdrawn without written order of the court.

(6) (a) A person may not seek a protective order against an intimate partner, as defined by federal law in Title 18 U.S.C. Section 921, of the person under this part.

(b) A person may seek a protective order against a cohabitant, as defined by section 78B-7-102, or an intimate partner, as defined by federal law, of the person under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

Enacted by Chapter 179, 2013 General Session

78B-7-404. Dating violence orders -- Ex parte dating violence protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for a protective order or a petition to modify an existing protective order that a dating partner of the petitioner has abused or committed dating violence against the petitioner, the district court may:

(a) without notice, immediately issue an ex parte dating violence protective order against the dating partner or modify an existing dating protective order ex parte if necessary to protect the petitioner and all parties named in the petition; or

(b) upon notice to the respondent, issue a dating violence protective order or modify a dating violence protective order after a hearing, regardless of whether the respondent appears.

(2) A district court may grant the following relief without notice in a dating violence protective order or a modification issued ex parte:

(a) prohibit the respondent from threatening to commit or committing dating violence or abuse against the petitioner and any designated family or household member described in the protective order;

(b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly;

(c) order that the respondent:

(i) is excluded and shall stay away from the petitioner's residence and its premises;

(ii) except as provided in Subsection (4), stay away from the petitioner's:

(A) school and the school's premises; and

(B) place of employment and its premises; and

(iii) stay away from any specified place frequented by the petitioner or any designated family or household member;

(d) prohibit the respondent from being within a specified distance of the petitioner; and

(e) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(3) A court may grant the following relief in a dating violence protective order or a modification of a dating violence protective order, after notice and a hearing, regardless of whether the respondent appears:

(a) the relief described in Subsection (2); and

(b) except as provided in Subsection (5), upon finding that the respondent's use or possession of a weapon poses a serious threat of harm to the petitioner or any designated family or household member, prohibit the respondent from purchasing, using, or possessing a weapon specified by the court.

(4) If the petitioner or designated family or household member attends the same school as the respondent, or is employed at the same place of employment as the respondent, the district court:

(a) may not enter an order under Subsection (2)(c)(ii) that excludes the respondent from the respondent's school or place of employment; and

(b) may enter an order governing the respondent's conduct at the respondent's school or place of employment.

(5) The district court may not prohibit the respondent from possessing a firearm:

(a) if the respondent has not been given notice of the petition for a protective order and an opportunity to be heard; and

(b) unless the petition establishes:

(i) by a preponderance of the evidence that the respondent has committed abuse or dating violence against the petitioner; and

(ii) by clear and convincing evidence that the respondent's use or possession of a firearm poses a serious threat of harm to petitioner or the designated family or household member.

(6) Any protective order issued under this part shall expire 180 days after the day on which the order is issued.

(7) After the district court issues a dating violence protective order, the district court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts at the hearing to ensure that the dating violence protective order is understood by the petitioner and the respondent, if present;

(c) transmit electronically, by the end of the business day after the day on which the order is issued, a copy of the dating violence protective order to the local law enforcement agency designated by the petitioner; and

(d) transmit a copy of the protective order issued under this part in the same manner as described in Section 78B-7-113.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (7)(a), shall:

(i) provide expedited service for protective orders issued in accordance with this part; and

(ii) after the order has been served, transmit verification of service of process to the statewide network described in Section 78B-7-110.

(b) This section does not prohibit another law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that, under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) When a protective order is served on a respondent in jail, or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(10) A district court may modify or vacate a protective order under this part after notice and hearing, if the petitioner:

(a) is personally served with notice of the hearing, as provided in the Utah Rules of Civil Procedure, and appears before the court to give specific consent to the modification or vacation of the provisions of the protective order; or

(b) submits an affidavit agreeing to the modification or vacation of the provisions of the protective order.

(11) To the extent that the provisions of this part are more specific than the Utah Rules of Civil Procedure regarding protective orders, the provisions of this part

govern.

Enacted by Chapter 179, 2013 General Session

78B-7-405. Hearings on ex parte dating violence protective orders.

(1) (a) Within 20 days after the day on which the court issues an ex parte protective order, the district court shall set a date for a hearing on the petition.

(b) If, at the hearing described in Subsection (1)(a), the district court does not issue a dating violence protective order, the ex parte dating protective order shall expire, unless it is extended by the district court. Extensions beyond the 20-day period may not be granted unless:

(i) the petitioner is unable to be present at the hearing;

(ii) the respondent has not been served; or

(iii) exigent circumstances exist.

(c) Under no circumstances may an ex parte order be extended beyond 180 days from the day on which the court issues the initial ex parte protective order.

(d) If, at the hearing described in Subsection (1)(a), the district court issues a dating violence protective order, the ex parte protective order shall remain in effect until service of process of the dating violence protective order is completed.

(e) A dating violence protective order issued after notice and a hearing shall remain in effect from 180 days after the day on which the order is issued.

(f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 calendar days after the day on which the recommended order is entered, and the assigned judge shall hold a hearing on the objection within 20 days after the day on which the objection is filed.

(2) Upon a hearing under this section, the district court may grant any of the relief permitted under Section 78B-7-404, except the district court shall not grant the relief described in Subsection 78B-7-404(3)(b) without providing the respondent notice and an opportunity to be heard.

(3) If a district court denies a petition for an ex parte dating violence protective order or a petition to modify a dating violence protective order ex parte, the district court shall, upon the petitioner's request:

(a) set the matter for hearing; and

(b) notify and serve the respondent.

Amended by Chapter 263, 2014 General Session

78B-7-406. Fees -- Service of process.

(1) Protective orders issued under this part shall be served by the sheriff's office, constable's office, or any law enforcement agency or peace officer, in accordance with Subsection 78B-7-404(8).

(2) Fees may not be imposed by a court clerk, sheriff, constable, or law enforcement agency for:

(a) filing a petition under this part;

(b) obtaining a protective order under this part; or

(c) service of a protective order issued under this part.

(3) (a) The offices of the court clerk shall provide forms and nonlegal assistance to an individual seeking to proceed under this part.

(b) The Administrative Office of the Courts shall:

(i) develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter; and

(ii) provide the forms described in Subsection (3)(b)(i) to the clerk of each court authorized to issue protective orders.

(c) The forms described in Subsection (3)(b)(i) shall include:

(i) a statement notifying the petitioner for an ex parte dating violence protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) language stating violating of any criminal provision is a class B misdemeanor; and

(iii) a space for any information the petitioner is able to provide to facilitate identification of the respondent, including Social Security number, driver license number, date of birth, address, telephone number, and physical description.

(4) If the individual seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (3);

(b) all other forms required to petition for an order for protection, including forms for service;

(c) except for as provided by Subsection (5), clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (3)(a);

(d) information regarding the means available for the service of process;

(e) a list of legal service organizations that may represent the petitioner in an action brought under this part, with the phone numbers of those organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation for the use of transportation order forms when necessary.

(5) A court clerk's office may designate any other entity, agency, or individual to provide the service described in Subsection (4)(c), but the court clerk's office is responsible to see that the service is provided.

(6) A petition for a dating violence protective order or ex parte dating violence protective order shall be in writing and verified.

(7) (a) All protective orders issued under this part shall be issued in the form adopted by the Administrative Office of the Courts under Subsection (3)(b).

(b) Each protective order issued under this part, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

Enacted by Chapter 179, 2013 General Session

78B-7-407. Enforcement.

(1) A law enforcement officer shall, without a warrant, arrest a person if the officer has probable cause to believe that the person has intentionally or knowingly violated a protective order issued under this part, regardless of whether the violation occurred in the presence of the officer.

(2) A violation of a protective order issued under this part constitutes a class B misdemeanor.

Enacted by Chapter 179, 2013 General Session

78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI cases or providing illegal controlled substances -- Division of award with state.

(1) (a) Except as otherwise provided by statute, punitive damages may be awarded only if compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others.

(b) The limitations, standards of evidence, and standards of conduct of Subsection (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's:

(i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502;

(ii) causing death of another person by providing or administering an illegal controlled substance to the person under Section 78B-3-801; or

(iii) providing an illegal controlled substance to any person in the chain of transfer that connects directly to a person who subsequently provided or administered the substance to a person whose death was caused in whole or in part by the substance.

(c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not subject to the prior award of compensatory or general damages under Subsection (1)(a) whether or not restitution has been paid to the merchant prior to or as a part of a civil action under Section 78B-3-108.

(2) Evidence of a party's wealth or financial condition shall be admissible only after a finding of liability for punitive damages has been made.

(a) Discovery concerning a party's wealth or financial condition may only be allowed after the party seeking punitive damages has established a prima facie case on the record that an award of punitive damages is reasonably likely against the party about whom discovery is sought and, if disputed, the court is satisfied that the discovery is not sought for the purpose of harassment.

(b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the tortfeasor's:

(i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502;

(ii) causing death of another person or causing a person to be addicted by providing or administering an illegal controlled substance to the person under Section 78B-3-801; or

(iii) providing an illegal controlled substance to any person in the chain of transfer that connects directly to a person who subsequently provided or administered the substance to a person whose death was caused in whole or in part by the substance.

(3) (a) In any case where punitive damages are awarded, the court shall enter judgment as follows:

(i) for the first $50,000, judgment shall be in favor of the injured party; and

(ii) any amount in excess of $50,000 shall be divided equally between the state and the injured party, and judgment to each entered accordingly.

(b) (i) The actual and bona fide attorney fees and costs incurred in obtaining and collecting the judgment for punitive damages shall be considered to have been incurred by the state and the injured party in proportion to the judgment entered in each party's behalf.

(A) The state and injured party shall be responsible for each one's proportionate share only.

(B) The state is liable to pay its proportionate share only to the extent it receives payment toward its judgment.

(ii) If the court awards attorney fees and costs to the injured party as a direct result of the punitive damage award, the state shall have a corresponding credit in a proportionate amount based on the amounts of the party's respective punitive damage judgments. This credit may be applied as an offset against the amount of attorney fees and costs charged to the state for obtaining the punitive damage judgment.

(c) The state shall have all rights due a judgment creditor to collect the full amounts of both punitive damage judgments until the judgments are fully satisfied.

(i) Neither party is required to pursue collection.

(ii) In pursuing collection, the state may exercise any of its collection rights under Section 63A-3-301 et seq., Section 63A-3-502 et seq., and any other statutory provisions. Any amounts collected on these judgments by either party shall be held in trust and distributed as set forth in Subsection (3)(e).

(d) Unless all affected parties, including the state, expressly agree otherwise, collection on the punitive damages judgment shall be deferred until all other judgments have been fully paid. Any payment by or on behalf of any judgment debtor, whether voluntary, by execution, or otherwise, shall be distributed and applied in the following order:

(i) to the judgment for compensatory damage and any applicable judgment for attorney fees and costs;

(ii) to the initial $50,000 of the punitive damage judgment;

(iii) to any judgment for attorney fees and costs awarded as a direct result of the punitive damages; and

(iv) to the remaining judgments for punitive damages.

(e) Any partial payments shall be distributed equally between the state and injured party.

(f) After the payment of attorney fees and costs, all amounts paid on the state's judgment shall be remitted to the state treasurer to be deposited into the General Fund.

Amended by Chapter 79, 2011 General Session

78B-8-202. Punitive damages -- Notification procedure.

(1) Whenever it appears from a return of a jury verdict in any court jury trial or from entry of a finding or order in any court bench trial, that punitive damages have been awarded to the plaintiff in a court action, the clerk of the court shall immediately notify the attorney general and state treasurer of the verdict, finding, or order. The notice shall contain:

(a) the names of both parties to the action, and their attorneys;

(b) the case number; and

(c) the location of the court.

(2) In addition to the notice required in Subsection (1) of this section, the clerk of the court shall notify the attorney general and the state treasurer within five days after entry of a judgment award of punitive damages. The notice shall contain:

(a) the name of the party and his attorney, against whom the judgment was ordered;

(b) the amount of the judgment; and

(c) the date on which the judgment was entered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-203. Drug exception.

(1) Punitive damages may not be awarded if a drug causing the claimant's harm:

(a) received premarket approval or licensure by the Federal Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq. or the Public Health Service Act, 42 U.S.C. Section 201 et seq.;

(b) is generally recognized as safe and effective under conditions established by the Federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) This limitation on liability for punitive damages does not apply if it is shown by clear and convincing evidence that the drug manufacturer knowingly withheld or misrepresented information required to be submitted to the Federal Food and Drug Administration under its regulations, which information was material and relevant to the claimant's harm.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-301. Title.

This part is known as the "Process Server Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-302. Process servers.

(1) Complaints, summonses, and subpoenas may be served by a person who is:

(a) 18 years of age or older at the time of service; and

(b) not a party to the action or a party's attorney.

(2) Except as provided in Subsection (5), the following may serve all process issued by the courts of this state:

(a) a peace officer employed by a political subdivision of the state acting within the scope and jurisdiction of the peace officer's employment;

(b) a sheriff or appointed deputy sheriff employed by a county of the state;

(c) a constable, or the constable's deputy, serving in compliance with applicable law;

(d) an investigator employed by the state and authorized by law to serve civil process; and

(e) a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act.

(3) A private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, may not make an arrest pursuant to a bench warrant.

(4) While serving process, a private investigator shall:

(a) have on the investigator's person a visible form of credentials and identification identifying:

(i) the investigator's name;

(ii) that the investigator is a licensed private investigator; and

(iii) the name and address of the agency employing the investigator or, if the investigator is self-employed, the address of the investigator's place of business;

(b) verbally communicate to the person being served that the investigator is acting as a process server; and

(c) print on the first page of each document served:

(i) the investigator's name and identification number as a private investigator; and

(ii) the address and phone number for the investigator's place of business.

(5) Any service under this section when the use of force is authorized on the face of the document, or when a breach of the peace is imminent or likely under the totality of the circumstances, may only be served by:

(a) a law enforcement officer, as defined in Section 53-13-103; or

(b) a constable, as defined in Subsection 53-13-105(1)(b)(ii).

(6) The following may not serve process issued by a court:

(a) a person convicted of a felony violation of an offense listed in Subsection 77-41-102(16); or

(b) a person who is a respondent in a proceeding described in Title 78B, Chapter 7, Protective Orders, in which a court has granted the petitioner a protective

order.

(7) A person serving process shall:

(a) legibly document the date and time of service on the front page of the document being served;

(b) legibly print the process server's name, address, and telephone number on the return of service;

(c) sign the return of service in substantial compliance with Section 78B-5-705;

(d) if the process server is a peace officer, sheriff, or deputy sheriff, legibly print the badge number of the process server on the return of service; and

(e) if the process server is a private investigator, legibly print the private investigator's identification number on the return of service.

Amended by Chapter 378, 2014 General Session

78B-8-303. Recoverable rates.

If the rates charged by private process servers exceed the rates established by law for service of process by persons under Subsection 78B-8-302(1), the excess charge may be recovered as costs of an action only if the court determines the service and charge were justifiable under the circumstances.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-304. Violations of service of process authority.

(1) It is a class A misdemeanor for a person serving process to falsify a return of service.

(2) It is a class C misdemeanor for a person to bill falsely for process service.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-401. Definitions.

For purposes of this chapter:

(1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, and any other infectious disease specifically designated by the Labor Commission in consultation with the Department of Health for the purposes of this chapter.

(3) "Emergency services provider" means:

(a) an individual certified under Section 26-8a-302, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either as an employee or as a volunteer; or

(b) an individual who provides for the care, control, support, or transport of a prisoner.

(4) "First aid volunteer" means a person who provides voluntary emergency

assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or public safety officer.

(5) "Prisoner" is as defined in Section 76-5-101.

(6) "Public safety officer" means a peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications.

(7) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one person to the blood or body fluids of another person by:

(i) percutaneous injury, including a needle stick, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; or

(b) exposure that occurs by any other method of transmission defined by the Department of Health as a significant exposure.

Amended by Chapter 114, 2013 General Session

78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.

(1) An emergency services provider or first aid volunteer who is significantly exposed during the course of performing the emergency services provider's duties or during the course of performing emergency assistance or first aid may:

(a) request that the person to whom the emergency services provider or first aid volunteer was significantly exposed voluntarily submit to testing; or

(b) petition the district court for an order requiring that the person to whom the emergency services provider or first aid volunteer was significantly exposed submit to testing to determine the presence of a disease, as defined in Section 78B-8-401, and that the results of that test be disclosed to the petitioner by the Department of Health.

(2) (a) The petitioner shall file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with the provisions of this section.

(b) The petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

(3) (a) The petition described in Subsection (2) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

(b) The petitioner shall submit to testing to determine the presence of a disease, when the petition is filed or within three days after the petition is filed.

(4) The petitioner shall cause the petition required under this section to be served on the person who the petitioner is requesting to be tested in a manner that will best preserve the confidentiality of that person.

(5) (a) The court shall set a time for a hearing on the matter within 10 days after the petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

(b) The individual who is the subject of the petition shall also be notified that the individual may have an attorney present at the hearing and that the individual's

attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(6) The district court may enter an order requiring that an individual submit to testing, including blood testing, for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

(b) the exposure occurred during the course of the emergency services provider's duties, or the provision of emergency assistance or first aid by a first aid volunteer.

(7) The court may order that the blood specimen be obtained by the use of reasonable force if the individual who is the subject of the petition is a prisoner.

(8) The court may order that additional, follow-up testing be conducted and that the individual submit to that testing, as it determines to be necessary and appropriate.

(9) The court is not required to order an individual to submit to a test under this section if it finds that there is a substantial reason, relating to the life or health of the individual, not to enter the order.

(10) (a) Upon order of the district court that a person submit to testing for a disease, that person shall report to the designated local health department to have the person's blood drawn within 10 days from the issuance of the order, and thereafter as designated by the court, or be held in contempt of court.

(b) The court shall send the order to the Department of Health and to the local health department ordered to draw the blood.

(c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department may disclose the test results pursuant to a court order as provided in this section.

(d) Under this section, anonymous testing as provided under Section 26-6-3.5 shall not satisfy the requirements of the court order.

(11) The local health department or the Department of Health shall inform the subject of the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

(12) The court, its personnel, the process server, the Department of Health, local health department, and petitioner shall maintain confidentiality of the name and any other identifying information regarding the individual tested and the results of the test as they relate to that individual, except as specifically authorized by this chapter.

(13) (a) Except as provided in Subsection (13)(b), the petitioner shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

(b) If the petitioner is an emergency services provider, the agency that employs the emergency services provider shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

(14) The entity that draws the blood shall cause the blood and the payment for the analysis of the specimen to be delivered to the Department of Health for analysis.

(15) If the individual is incarcerated, the incarcerating authority shall either

draw the blood specimen or shall pay the expenses of having the individual's blood drawn.

Amended by Chapter 114, 2013 General Session

78B-8-403. Confidentiality -- Disclosure -- Penalty.

Any person or entity entitled to receive confidential information under this chapter, other than the individual tested and identified in the information, who violates the provisions of this chapter by releasing or making public that confidential information, or by otherwise breaching the confidentiality requirements of this chapter, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-404. Department authority -- Rules.

The Labor Commission, in consultation with the Department of Health, has authority to establish rules necessary for the purposes of Subsections 78B-8-401(2) and (7).

Amended by Chapter 114, 2013 General Session

78B-8-405. Construction.

Nothing in this part may be construed as prohibiting:

(1) a person from voluntarily consenting to the request of a health care provider, as defined in Section 78B-3-403, to submit to testing following a significant exposure; or

(2) a court from considering the petition of a health care provider for an order requiring that a person submit to testing to determine the presence of a disease if a significant exposure has occurred in connection with the health care provider's treatment of that person.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-501. Title.

This part is known as the "Small Business Equal Access to Justice Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-502. Legislative findings -- Purpose.

The Legislature finds that small businesses may be deterred from seeking review of or defending against substantially unjustified governmental action because of the expense involved in securing the vindication of their rights. The purpose of this part is to entitle small businesses, under conditions set forth in this act, to recover reasonable litigation expenses.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-503. Definitions.

As used in this part:

(1) "Prevail" means to obtain favorable final judgment, the right to all appeals having been exhausted, on the merits, on substantially all counts or charges in the action and with respect to the most significant issue or set of issues presented, but does not include the settlement of any action, either by stipulation, consent decree or otherwise, whether or not settlement occurs before or after any hearing or trial.

(2) "Reasonable litigation expenses" means court costs, administrative hearing costs, attorney fees, and witness fees of all necessary witnesses, not in excess of $25,000 which a court finds were reasonably incurred in opposing action covered under this part.

(3) "Small business" means a commercial or business entity, including a sole proprietorship, which does not have more than 250 employees, but does not include an entity which is a subsidiary or affiliate of another entity which is not a small business.

(4) "State" means any department, board, institution, hospital, college, or university of the state of Utah or any political subdivision thereof, except with respect to actions brought under Title 76, Chapter 10, Part 31, Utah Antitrust Act.

Amended by Chapter 187, 2013 General Session

78B-8-504. Litigation expense award authorized in actions by state.

In any civil judicial action commenced by the state, which involves the business regulatory functions of the state, a court may award reasonable litigation expenses to any small business which is a named party in the action if the small business prevails and the court finds that the state action was undertaken without substantial justification.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-505. Litigation expense award authorized in appeals from administrative decisions.

(1) In any civil judicial appeal taken from an administrative decision regarding a matter in which the administrative action was commenced by the state, and which involves the business regulatory functions of the state, a court may award reasonable litigation expenses to any small business which is a named party if the small business prevails in the appeal and the court finds that the state action was undertaken without substantial justification.

(2) Any state agency or political subdivision may require by rule or ordinance that a small business exhaust administrative remedies prior to making a claim under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-506. Payment of expenses awarded -- Statement required in agency's budget.

Expenses awarded under this part shall be paid from funds in the regular operating budget of the state entity. If sufficient funds are not available in the budget of the entity, the expenses shall be considered a claim governed by the provisions of Title 63G, Chapter 9, Board of Examiners Act. Every state entity against which litigation expenses have been awarded under this part shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-601. Definitions.

For purposes of this part:

(1) "Forest products" means any tree or portion thereof before it is manufactured into dimensional lumber, timbers, and ties, or mill peeled and made into power poles or house logs, including but not limited to coniferous and deciduous trees, Christmas trees, sawlogs, poles, posts, pulp logs, and fuelwood.

(2) "Native vegetation" means all other forest, desert, or rangeland vegetation including but not limited to shrubs, flora, roots, bulbs, and seed.

Enacted by Chapter 3, 2008 General Session

78B-8-602. Proof of ownership required to harvest or transport forest products or native vegetation -- Requirements for proof of ownership.

(1) It is unlawful for any person, firm, company, partnership, corporation, or business to harvest or transport timber, forest products, or other native vegetation without proof of ownership.

(2) Proof of ownership requires possession of:

(a) a contract, permit, or other writing issued by the landowner or proper state or federal agency;

(b) a bill of sale, or other sales receipt;

(c) a bill of lading or product load receipt;

(d) a ticket issued by the seller authorizing harvesting or removal; or

(e) any other legal instrument.

(3) The document required in Subsection (1) shall be issued by the landowner or proper state or federal agency and shall provide the following information:

(a) date of execution;

(b) name and address of person authorized to harvest or transport the products, if different from the purchaser;

(c) a legal or other sufficient description of the property from which the products are harvested or removed;

(d) the estimated amount or volume, species, and other pertinent information regarding the products harvested or transported;

(e) the delivery or scaling point;

(f) the name and address of the purchaser of the products;

(g) the name and address of the landowner, agency, or vendor; and

(h) an expiration date.

Enacted by Chapter 3, 2008 General Session

78B-8-603. Transportation of forest products or native vegetation into or through the state.

Timber, forest products, or native vegetation transported into or through the state shall be accompanied by a shipping permit or proof of ownership.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-604. Enforcement.

Any law enforcement officer specified in Section 53-13-103, or ranger, or special agent of the United States Forest Service or the United States Bureau of Land Management may:

(1) stop any vehicle or means of conveyance, including common carriers, containing timber, forest products, or native vegetation upon any road or highway of this state for the purpose of making an inspection and investigation but may not unduly detain a driver of such vehicle or means of conveyance;

(2) inspect the timber, forest product, or native vegetation in any vehicle, or other means of conveyance, including common carrier, to determine whether the provisions of this chapter have been complied with;

(3) seize and hold any timber, forest product, or native vegetation harvested, removed, or transported in violation of this part; and

(4) sell or dispose of the timber, forest product, or native vegetation as provided by rule by the appropriate agency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-605. Exemptions.

The provisions of this part do not apply to the transportation of:

(1) wood chips, sawdust, and bark;

(2) products transported by the owner of the property or his agent from which the products were removed; or

(3) products for personal consumption incidental to camping and picnicking which is limited to the amount:

(a) needed for the duration of the picnic or campout; and

(b) used at the campsite.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-8-606. Violation as misdemeanor.

Violation of Sections 78B-8-602 through 78B-8-604 is a class B misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-101. Title.

This chapter is known as the "Post-Conviction Remedies Act."

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session

78B-9-102. Replacement of prior remedies.

(1) This chapter establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal except as provided in Subsection (2). This chapter replaces all prior remedies for review, including extraordinary or common law writs. Proceedings under this chapter are civil and are governed by the rules of civil procedure. Procedural provisions for filing and commencement of a petition are found in Rule 65C, Utah Rules of Civil Procedure.

(2) This chapter does not apply to:

(a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense;

(b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal Procedure; or

(c) actions taken by the Board of Pardons and Parole.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session

78B-9-103. Applicability -- Effect on petitions.

Except for the limitation period established in Section 78B-9-107, this chapter applies only to post-conviction proceedings filed on or after July 1, 1996.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-104. Grounds for relief -- Retroactivity of rule.

(1) Unless precluded by Section 78B-9-106 or 78B-9-107, a person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence upon the following grounds:

(a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;

(b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected;

(c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;

(d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution;

(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because:

(i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence;

(ii) the material evidence is not merely cumulative of evidence that was known;

(iii) the material evidence is not merely impeachment evidence; and

(iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received; or

(f) the petitioner can prove entitlement to relief under a rule announced by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction and sentence became final on direct appeal, and that:

(i) the rule was dictated by precedent existing at the time the petitioner's conviction or sentence became final; or

(ii) the rule decriminalizes the conduct that comprises the elements of the crime for which the petitioner was convicted.

(2) The court may not grant relief from a conviction or sentence unless the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome in light of the facts proved in the post-conviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing.

(3) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3, Postconviction Testing of DNA , or Part 4, Postconviction Determination of Factual Innocence. Claims under Part 3 or Part 4 of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3 or Part 4.

Amended by Chapter 153, 2010 General Session

78B-9-105. Burden of proof.

(1) The petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief. The court may not grant relief without determining that the petitioner is entitled to relief under the provisions of this chapter and in light of the entire record, including the record from the criminal case under review.

(2) The respondent has the burden of pleading any ground of preclusion under Section 78B-9-106, but once a ground has been pled, the petitioner has the burden to disprove its existence by a preponderance of the evidence.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session

78B-9-106. Preclusion of relief -- Exception.

(1) A person is not eligible for relief under this chapter upon any ground that:

(a) may still be raised on direct appeal or by a post-trial motion;

(b) was raised or addressed at trial or on appeal;

(c) could have been but was not raised at trial or on appeal;

(d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or

(e) is barred by the limitation period established in Section 78B-9-107.

(2) (a) The state may raise any of the procedural bars or time bar at any time, including during the state's appeal from an order granting post-conviction relief, unless the court determines that the state should have raised the time bar or procedural bar at an earlier time.

(b) Any court may raise a procedural bar or time bar on its own motion, provided that it gives the parties notice and an opportunity to be heard.

(3) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis that the ground could have been but was not raised at trial or on appeal, if the failure to raise that ground was due to ineffective assistance of counsel.

(4) This section authorizes a merits review only to the extent required to address the exception set forth in Subsection (3).

Amended by Chapter 48, 2010 General Session

78B-9-107. Statute of limitations for postconviction relief.

(1) A petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued.

(2) For purposes of this section, the cause of action accrues on the latest of the following dates:

(a) the last day for filing an appeal from the entry of the final judgment of conviction, if no appeal is taken;

(b) the entry of the decision of the appellate court which has jurisdiction over the case, if an appeal is taken;

(c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or the United States Supreme Court, if no petition for writ of certiorari is filed;

(d) the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed;

(e) the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based; or

(f) the date on which the new rule described in Subsection 78B-9-104(1)(f) is established.

(3) The limitations period is tolled for any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, or due to physical or mental incapacity. The petitioner has the burden of proving by a preponderance of the evidence that the petitioner is entitled to relief under this Subsection (3).

(4) The statute of limitations is tolled during the pendency of the outcome of a petition asserting:

(a) exoneration through DNA testing under Section 78B-9-303; or

(b) factual innocence under Section 78B-9-401.

(5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations

period established in this section.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session
Amended by Chapter 358, 2008 General Session

78B-9-108. Effect of granting relief -- Notice.

(1) If the court grants the petitioner's request for relief, it shall either:

(a) modify the original conviction or sentence; or

(b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.

(2) (a) If the petitioner is serving a felony sentence, the order shall be stayed for five days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action.

(b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the custodian of the petitioner.

(c) If the respondent gives notice of intent to appeal the court's decision, the stay provided for by Subsection (2)(a) shall remain in effect until the appeal concludes, including any petitions for rehearing or for discretionary review by a higher court. The court may lift the stay if the petitioner can make the showing required for a certificate of probable cause under Section 77-20-10 and URCP 27.

(d) If the respondent gives notice that it intends to retry or resentence the petitioner, the trial court may order any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session

78B-9-109. Appointment of pro bono counsel.

(1) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent the petitioner in the post-conviction court or on post-conviction appeal. Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section.

(2) In determining whether to appoint counsel, the court shall consider the following factors:

(a) whether the petition or the appeal contains factual allegations that will require an evidentiary hearing; and

(b) whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication.

(3) An allegation that counsel appointed under this section was ineffective cannot be the basis for relief in any subsequent post-conviction petition.

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 288, 2008 General Session

78B-9-110. Appeal -- Jurisdiction.

Any party may appeal from the trial court's final judgment on a petition for post-conviction relief to the appellate court having jurisdiction pursuant to Section 78A-3-102 or 78A-4-103.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-201. Post-conviction remedies -- 30 days.

A post-conviction remedy may not be applied for or entertained by any court within 30 days prior to the date set for execution of a capital sentence, unless the grounds for application are based on facts or circumstances which developed or first became known within that period of time.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-202. Appointment and payment of counsel in death penalty cases.

(1) A person who has been sentenced to death and whose conviction and sentence has been affirmed on appeal shall be advised in open court, on the record, in a hearing scheduled no less than 30 days prior to the signing of the death warrant, of the provisions of this chapter allowing challenges to the conviction and death sentence and the appointment of counsel for indigent petitioners.

(2) (a) If a petitioner requests the court to appoint counsel, the court shall determine whether the petitioner is indigent and make findings on the record regarding the petitioner's indigency. If the court finds that the petitioner is indigent, it shall, subject to the provisions of Subsection (5), promptly appoint counsel who is qualified to represent petitioners in postconviction death penalty cases as required by Rule 8 of the Utah Rules of Criminal Procedure. Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section.

(b) A petitioner who wishes to reject the offer of counsel shall be advised on the record by the court of the consequences of the rejection before the court may accept the rejection.

(3) Attorney fees and litigation expenses incurred in providing the representation provided for in this section and that the court has determined are reasonable shall be paid from state funds by the Division of Finance according to rules established pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(a) In determining whether the requested funds are reasonable, the court should consider:

(i) the extent to which the petitioner requests funds to investigate and develop evidence and legal arguments that duplicate the evidence presented and arguments raised in the criminal proceeding; and

(ii) whether the petitioner has established that the requested funds are necessary to develop evidence and legal arguments that are reasonably likely to

support postconviction relief.

(b) The court may authorize payment of attorney fees at a rate of $125 per hour up to a maximum of $60,000. The court may exceed the maximum only upon a showing of good cause as established in Subsections (3)(e) and (f).

(c) The court may authorize litigation expenses up to a maximum of $20,000. The court may exceed the maximum only upon a showing of good cause as established in Subsections (3)(e) and (f).

(d) The court may authorize the petitioner to apply ex parte for the funds permitted in Subsections (3)(b) and (c) upon a motion to proceed ex parte and if the petitioner establishes the need for confidentiality. The motion to proceed ex parte must be served on counsel representing the state, and the court may not grant the motion without giving the state an opportunity to respond.

(e) In determining whether good cause exists to exceed the maximum sums established in Subsections (3)(b) and (c), the court shall consider:

(i) the extent to which the work done to date and the further work identified by the petitioner duplicates work and investigation performed during the criminal case under review; and

(ii) whether the petitioner has established that the work done to date and the further work identified is reasonably likely to develop evidence or legal arguments that will support postconviction relief.

(f) The court may permit payment in excess of the maximum amounts established in Subsections (3)(b) and (c) only on the petitioner's motion, provided that:

(i) if the court has granted a motion to file ex parte applications under Subsection (3)(d), the petitioner shall serve the motion to exceed the maximum amounts on an assistant attorney general employed in a division other than the one in which the attorney is employed who represents the state in the postconviction case; if the court has not granted a motion to file ex parte applications, then the petitioner must serve the attorney representing the state in the postconviction matter with the motion to exceed the maximum funds;

(ii) if the motion proceeds under Subsection (3)(f)(i), the designated assistant attorney general may not disclose to the attorney representing the state in the postconviction matter any material the petitioner provides in support of the motion except upon a determination by the court that the material is not protected by or that the petitioner has waived the attorney client privilege or work product doctrine; and

(iii) the court gives the state an opportunity to respond to the request for funds in excess of the maximum amounts provided in Subsections (3)(b) and (c).

(4) Nothing in this chapter shall be construed as creating the right to the effective assistance of postconviction counsel, and relief may not be granted on any claim that postconviction counsel was ineffective.

(5) If within 60 days of the request for counsel the court cannot find counsel willing to accept the appointment, the court shall notify the petitioner and the state's counsel in writing. In that event, the petitioner may elect to proceed pro se by serving written notice of that election on the court and state's counsel within 30 days of the court's notice that no counsel could be found. If within 30 days of its notice to the petitioner the court receives no notice that the petitioner elects to proceed pro se, the court shall dismiss any pending postconviction actions and vacate any execution

stays, and the state may initiate proceedings under Section 77-19-9 to issue an execution warrant.

(6) Subject to Subsection (2)(a) the court shall appoint counsel to represent the petitioner for the first petition filed after the direct appeal. For all other petitions, counsel may not be appointed at public expense for a petitioner, except to raise claims:

(a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or

(b) based on Subsection 78B-9-104(1)(f) that could not have been raised in any previously filed post trial motion or postconviction proceeding.

Amended by Chapter 165, 2011 General Session

78B-9-300. Title.

This part is known as "Postconviction DNA Testing."

Enacted by Chapter 358, 2008 General Session

78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations -- Notification of victim.

(1) As used in this part:

(a) "DNA" means deoxyribonucleic acid.

(b) "Factually innocent" has the same definition as in Section 78B-9-402.

(2) A person convicted of a felony offense may at any time file a petition for postconviction DNA testing in the trial court that entered the judgment of conviction if the person asserts factual innocence under oath and the petition alleges:

(a) evidence has been obtained regarding the person's case which is still in existence and is in a condition that allows DNA testing to be conducted;

(b) the chain of custody is sufficient to establish that the evidence has not been altered in any material aspect;

(c) the person identifies the specific evidence to be tested and states a theory of defense, not inconsistent with theories previously asserted at trial, that the requested DNA testing would support;

(d) the evidence was not previously subjected to DNA testing, or if the evidence was tested previously, the evidence was not subjected to the testing that is now requested, and the new testing may resolve an issue not resolved by the prior testing;

(e) the proposed DNA testing is generally accepted as valid in the scientific field or is otherwise admissible under Utah law;

(f) the evidence that is the subject of the request for testing has the potential to produce new, noncumulative evidence that will establish the person's factual innocence; and

(g) the person is aware of the consequences of filing the petition, including:

(i) those specified in Sections 78B-9-302 and 78B-9-304; and

(ii) that the person is waiving any statute of limitations in all jurisdictions as to any felony offense the person has committed which is identified through DNA

database comparison.

(3) The petition under Subsection (2) shall comply with Rule 65C, Utah Rules of Civil Procedure, including providing the underlying criminal case number.

(4) The court may not order DNA testing in cases in which DNA testing was available at the time of trial and the person did not request DNA testing or present DNA evidence for tactical reasons.

(5) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which may be subject to DNA testing.

(6) (a) A person who files a petition under this section shall serve notice upon the office of the prosecutor who obtained the conviction, and upon the Utah attorney general. The attorney general shall, within 30 days after receipt of service of a copy of the petition, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

(b) After the attorney general is given an opportunity to respond to a petition for postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of the evidence that all criteria of Subsection (2) have been met.

(7) (a) If the court grants the petition for testing, the DNA test shall be performed by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division created in Section 53-10-103, unless the person establishes that the state crime laboratory has a conflict of interest or does not have the capability to perform the necessary testing.

(b) If the court orders that the testing be conducted by any laboratory other than the state crime laboratory, the court shall require that the testing be performed:

(i) under reasonable conditions designed to protect the state's interests in the integrity of the evidence; and

(ii) according to accepted scientific standards and procedures.

(8) (a) DNA testing under this section shall be paid for from funds appropriated to the Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen Restricted Account created in Section 53-10-407 if:

(i) the court ordered the DNA testing under this section;

(ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division has a conflict of interest or does not have the capability to perform the necessary testing; and

(iii) the petitioner who has filed for postconviction DNA testing under Section 78B-9-201 is serving a sentence of imprisonment and is indigent.

(b) Under this Subsection (8), costs of DNA testing include those necessary to transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports of findings.

(9) If the person is serving a sentence of imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but if the result is not favorable to the person the court may order the person to reimburse the state for the costs of the testing, pursuant to the provisions of Subsections 78B-9-302(4) and 78B-9-304(1)(b).

(10) Any victim of the crime regarding which the person petitions for DNA

testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney of any hearing regarding the petition and testing, even though the hearing is a civil proceeding.

Amended by Chapter 405, 2010 General Session

78B-9-302. Effect of petition for postconviction DNA testing -- Requests for appointment of counsel -- Appeals -- Subsequent postconviction petitions.

(1) The filing of a petition for DNA testing constitutes the person's consent to provide samples of body fluids for use in the DNA testing.

(2) The data from any DNA samples or test results obtained as a result of the petition may be entered into law enforcement DNA databases.

(3) The filing of a petition for DNA testing constitutes the person's waiver of any statute of limitations in all jurisdictions as to any felony offense the person has committed which is identified through DNA database comparison.

(4) The person filing the petition for postconviction DNA testing bears the cost of the testing unless:

(a) the person is serving a sentence of imprisonment;

(b) the person is indigent; and

(c) the DNA test is favorable to the petitioner.

(5) (a) Subsections 78B-9-109(1) and (2), regarding the appointment of pro bono counsel, apply to any request for the appointment of counsel under this part.

(b) Subsection 78B-9-109(3), regarding effectiveness of counsel, applies to subsequent postconviction petitions and to appeals under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-303. Consequences of postconviction DNA testing when result is favorable to person -- Procedures.

(1) (a) If the result of postconviction DNA testing is favorable to the person, the person may file a motion to vacate the conviction. The court shall give the state 30 days to respond in writing, to present evidence, and to be heard in oral argument prior to issuing an order to vacate the conviction. The state may by motion request an extension of the 30 days, which the court may grant upon good cause shown.

(b) The state may stipulate to the conviction being vacated, or may request a hearing and attempt to demonstrate through evidence and argument that, despite the DNA test results, the state possesses sufficient evidence of the person's guilt so that the person is unable to demonstrate by clear and convincing evidence that the person is factually innocent of one or more offenses of which the person was convicted, and all the lesser included offenses related to those offenses.

(2) (a) (i) If the result of postconviction DNA testing is favorable to the person and the state opposes vacating the conviction, the court shall consider all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result.

(ii) The court may consider:

(A) evidence that was suppressed or would be suppressed at a criminal trial;

and

(B) hearsay evidence, and may consider that the evidence is hearsay in evaluating its weight and credibility.

(b) If the court, after considering all the evidence, determines that the DNA test result demonstrates by clear and convincing evidence that the person is factually innocent of one or more offenses of which the person was convicted, the court shall order that those convictions be vacated with prejudice and those convictions be expunged from the person's record.

(c) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, finds by clear and convincing evidence that the person did not commit one or more offenses of which the person was convicted, but the court does not find by clear and convincing evidence that the person did not commit any lesser included offenses relating to those offenses, the court shall modify the original conviction and sentence of the person as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.

(d) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, does not find by clear and convincing evidence that the person is factually innocent of the offense or offenses the person is challenging and does not find that Subsection (2)(c) applies, the court shall deny the person's petition regarding the offense or offenses.

(e) Any party may appeal from the trial court's final ruling on the petition under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-304. Consequences of postconviction DNA testing when result is unfavorable to person -- Procedures.

(1) If the result of postconviction DNA testing is not favorable to the person, the court shall deny the person's petition, and the court shall:

(a) report the unfavorable result to the Board of Pardons and Parole; and

(b) order the person to pay for the costs of the DNA testing unless the petitioner has already paid that cost.

(2) This section does not apply if the DNA test is inconclusive.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-401. Title.

This part is known as "Postconviction Determination of Factual Innocence."

Enacted by Chapter 358, 2008 General Session

78B-9-401.5. Definitions.

As used in this part:

(1) "Bona fide and compelling issue of factual innocence" means that the newly discovered material evidence presented by the petitioner, if credible, would

clearly establish the factual innocence of the petitioner.

(2) "Factual innocence" or "factually innocent" means a person did not:

(a) engage in the conduct for which the person was convicted;

(b) engage in conduct relating to any lesser included offenses of the crime for which the person was convicted; or

(c) commit any other felony arising out of or reasonably connected to the facts supporting the indictment or information upon which the person was convicted.

(3) "Newly discovered material evidence" means evidence that was not available to the petitioner at trial or during the resolution on the merits by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is relevant to the determination of the issue of factual innocence, and may also include:

(a) evidence which was discovered prior to or in the course of any appeal or postconviction proceedings that served in whole or in part as the basis for vacatur or reversal of the conviction of petitioner; or

(b) evidence that supports the claims within a petition filed under Part 1, General Provisions, which is pending at the time of the court's determination of factual innocence.

(4) "Period of incarceration" means any sentence of imprisonment, including jail, which was served after judgement of conviction.

Enacted by Chapter 153, 2010 General Session

78B-9-402. Petition for determination of factual innocence -- Sufficient allegations -- Notification of victim -- Payment to surviving spouse.

(1) A person who has been convicted of a felony offense may petition the district court in the county in which the person was convicted for a hearing to establish that the person is factually innocent of the crime or crimes of which the person was convicted.

(2) (a) The petition shall contain an assertion of factual innocence under oath by the petitioner and shall aver, with supporting affidavits or other credible documents, that:

(i) newly discovered material evidence exists that, if credible, establishes that the petitioner is factually innocent;

(ii) the specific evidence identified by the petitioner in the petition establishes innocence;

(iii) the material evidence is not merely cumulative of evidence that was known;

(iv) the material evidence is not merely impeachment evidence; and

(v) viewed with all the other evidence, the newly discovered evidence demonstrates that the petitioner is factually innocent.

(b) The court shall review the petition in accordance with the procedures in Subsection (9)(b), and make a finding that the petition has satisfied the requirements of Subsection (2)(a). If the court finds the petition does not meet all the requirements of Subsection (2)(a), it shall dismiss the petition without prejudice and send notice of the dismissal to the petitioner and the attorney general.

(3) (a) The petition shall also contain an averment that:

(i) neither the petitioner nor the petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction motion, and the evidence could not have been discovered by the petitioner or the petitioner's counsel through the exercise of reasonable diligence; or

(ii) a court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the evidence.

(b) Upon entry of a finding that the petition is sufficient under Subsection (2)(a), the court shall then review the petition to determine if Subsection (3)(a) has been satisfied. If the court finds that the requirements of Subsection (3)(a) have not been satisfied, it may dismiss the petition without prejudice and give notice to the petitioner and the attorney general of the dismissal, or the court may waive the requirements of Subsection (3)(a) if the court finds the petition should proceed to hearing based upon the strength of the petition, and that there is other evidence that could have been discovered through the exercise of reasonable diligence by the petitioner or the petitioner's counsel at trial, and the other evidence:

(i) was not discovered by the petitioner or the petitioner's counsel;

(ii) is material upon the issue of factual innocence; and

(iii) has never been presented to a court.

(4) If the conviction for which the petitioner asserts factual innocence was based upon a plea of guilty, the petition shall contain the specific nature and content of the evidence that establishes factual innocence. The court shall review the evidence and may dismiss the petition at any time in the course of the proceedings, if the court finds that the evidence of factual innocence relies solely upon the recantation of testimony or prior statements made by a witness against the petitioner, and the recantation appears to the court to be equivocal or selfserving.

(5) A person who has already obtained postconviction relief that vacated or reversed the person's conviction or sentence may also file a petition under this part in the same manner and form as described above, if no retrial or appeal regarding this offense is pending.

(6) If some or all of the evidence alleged to be exonerating is biological evidence subject to DNA testing, the petitioner shall seek DNA testing pursuant to Section 78B-9-301.

(7) Except as provided in Subsection (9), the petition and all subsequent proceedings shall be in compliance with and governed by Rule 65C, Utah Rules of Civil Procedure, and shall include the underlying criminal case number.

(8) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel shall cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which is the subject of the petition.

(9) (a) A person who files a petition under this section shall serve notice of the petition and a copy of the petition upon the office of the prosecutor who obtained the conviction and upon the Utah attorney general.

(b) The assigned judge shall conduct an initial review of the petition. If it is apparent to the court that the petitioner is either merely relitigating facts, issues, or evidence presented in previous proceedings or presenting issues that appear frivolous

or speculative on their face, the court shall dismiss the petition, state the basis for the dismissal, and serve notice of dismissal upon the petitioner and the attorney general. If, upon completion of the initial review, the court does not dismiss the petition, it shall order the attorney general to file a response to the petition. The attorney general shall, within 30 days after receipt of the court's order, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

(c) After the time for response by the attorney general under Subsection (9)(b) has passed, the court shall order a hearing if it finds the petition meets the requirements of Subsections (2) and (3) and finds there is a bona fide and compelling issue of factual innocence regarding the charges of which the petitioner was convicted. No bona fide and compelling issue of factual innocence exists if the petitioner is merely relitigating facts, issues, or evidence presented in a previous proceeding or if the petitioner is unable to identify with sufficient specificity the nature and reliability of the newly discovered evidence that establishes the petitioner's factual innocence.

(d) If the parties stipulate that the evidence establishes that the petitioner is factually innocent, the court may find the petitioner is factually innocent without holding a hearing. If the state will not stipulate that the evidence establishes that the petitioner is factually innocent, no determination of factual innocence may be made by the court without first holding a hearing under this part.

(10) The court may not grant a petition for a hearing under this part during the period in which criminal proceedings in the matter are pending before any trial or appellate court, unless stipulated to by the parties.

(11) Any victim of a crime that is the subject of a petition under this part, and who has elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any hearing regarding the petition.

(12) A petition to determine factual innocence under this part, or Part 3, Postconviction Testing of DNA, shall be filed separately from any petition for postconviction relief under Part 1, General Provisions. Separate petitions may be filed simultaneously in the same court.

(13) The procedures governing the filing and adjudication of a petition to determine factual innocence apply to all petitions currently filed or pending in the district court and any new petitions filed on or after June 1, 2012.

(14) (a) As used in this Subsection (14) and in Subsection (15):

(i) "Married" means the legal marital relationship established between a man and a woman and as recognized by the laws of this state; and

(ii) "Spouse" means a person married to the petitioner at the time the petitioner was found guilty of the offense regarding which a petition is filed and who has since then been continuously married to the petitioner until the petitioner's death.

(b) A claim for determination of factual innocence under this part is not extinguished upon the death of the petitioner.

(c) If any payments are already being made to the petitioner under this part at the time of the death of the petitioner, or if the finding of factual innocence occurs after the death of the petitioner, the payments due under Section 78B-9-405 shall be paid according to the schedule under Section 78B-9-405 to the petitioner's surviving

spouse. Payments cease upon the death of the spouse.

(15) The spouse under Subsection (14) forfeits all rights to receive any payment under this part if the spouse is charged with a homicide established by a preponderance of the evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5, Offenses Against the Person, except automobile homicide, applying the same principles of culpability and defenses as in Title 76, Utah Criminal Code, including Title 76, Chapter 2, Principles of Criminal Responsibility.

Amended by Chapter 46, 2013 General Session

78B-9-403. Requests for appointment of counsel -- Appeals -- Postconviction petitions.

(1) Subsections 78B-9-109(1) and (2), regarding the appointment of pro bono counsel, apply to any request for the appointment of counsel under this part.

(2) Subsection 78B-9-109(3), regarding effectiveness of counsel, applies to subsequent postconviction petitions and to appeals under this part.

Enacted by Chapter 358, 2008 General Session

78B-9-404. Hearing upon petition -- Procedures -- Court determination of factual innocence.

(1) (a) In any hearing conducted under this part, the Utah attorney general shall represent the state.

(b) The burden is upon the petitioner to establish the petitioner's factual innocence by clear and convincing evidence.

(2) The court may consider:

(a) evidence that was suppressed or would be suppressed at a criminal trial; and

(b) hearsay evidence, and may consider that the evidence is hearsay in evaluating its weight and credibility.

(3) In making its determination the court shall consider, in addition to the evidence presented at the hearing under this part, the record of the original criminal case and at any postconviction proceedings in the case.

(4) If the court, after considering all the evidence, determines by clear and convincing evidence that the petitioner:

(a) is factually innocent of one or more offenses of which the petitioner was convicted, the court shall order that those convictions:

(i) be vacated with prejudice; and

(ii) be expunged from the petitioner's record; or

(b) did not commit one or more offenses of which the petitioner was convicted, but the court does not find by clear and convincing evidence that the petitioner did not commit any lesser included offenses relating to those offenses, the court shall modify the original conviction and sentence of the petitioner as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.

(5) (a) If the court, after considering all the evidence, does not determine by

clear and convincing evidence that the petitioner is factually innocent of the offense or offenses the petitioner is challenging and does not find that Subsection (4)(b) applies, the court shall deny the petition regarding the offense or offenses.

(b) If the court finds that the petition was brought in bad faith, it shall enter the finding on the record, and the petitioner may not file a second or successive petition under this section without first applying to and obtaining permission from the court which denied the prior petition.

(6) At least 30 days prior to a hearing on a petition to determine factual innocence, the petitioner and the respondent shall exchange information regarding the evidence each intends to present at the hearing. This information shall include:

(a) a list of witnesses to be called at the hearing; and

(b) a summary of the testimony or other evidence to be introduced through each witness, including any expert witnesses.

(7) Each party is entitled to a copy of any expert report to be introduced or relied upon by that expert or another expert at least 30 days prior to hearing.

(8) The court, after considering all the evidence, may not find the petitioner to be factually innocent unless:

(a) the court determines by clear and convincing evidence that the petitioner did not commit one or more of the offenses of which the petitioner was convicted, as defined in Subsection 78B-9-401.5(2); and

(b) the determination is based upon the newly discovered material evidence described in the petition, pursuant to Section 78B-9-402, and as defined in Subsection 78B-9-401.5(3).

Amended by Chapter 220, 2012 General Session

78B-9-405. Judgment and assistance payment.

(1) (a) If a court finds a petitioner factually innocent under Part 3, Postconviction Testing of DNA, or under this part, and if the petitioner has served a period of incarceration, the court shall order that, as provided in Subsection (2), the petitioner shall receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah, as determined by the data most recently published by the Department of Workforce Services at the time of the petitioner's release from prison.

(b) As used in this Subsection (1), "petitioner" means a United States citizen or an individual who was otherwise lawfully present in this country at the time of the incident that gave rise to the underlying conviction.

(2) Payments pursuant to this section shall be made as follows:

(a) The Utah Office for Victims of Crime shall pay from the Crime Victim Reparations Fund to the petitioner within 45 days of the court order under Subsection (1) an initial sum equal to either 20% of the total financial assistance payment as determined under Subsection (1) or an amount equal to two years of incarceration, whichever is greater, but not to exceed the total amount owed.

(b) The Legislature shall appropriate as nonlapsing funds from the General Fund, and no later than the next general session following the issuance of the court

order under Subsection (1):

(i) to the Crime Victim Reparations Fund, the amount that was paid out of the fund under Subsection (2)(a); and

(ii) to the Commission on Criminal and Juvenile Justice, as a separate line item, the amount ordered by the court for payments under Subsection (1), minus the amount reimbursed to the Crime Victim Reparations Fund under Subsection (2)(b)(i).

(c) Payments to the petitioner under this section, other than the payment under Subsection (2)(a), shall be made by the Commission on Criminal and Juvenile Justice quarterly on or before the last day of the month next succeeding each calendar quarterly period.

(d) Payments under Subsection (2)(c) shall:

(i) commence no later than one year after the effective date of the appropriation for the payments;

(ii) be made to the petitioner for the balance of the amount ordered by the court after the initial payment under Subsection (2)(a); and

(iii) be allocated so that the entire amount due to the petitioner under this section has been paid no later than 10 years after the effective date of the appropriation made under Subsection (2)(b).

(3) (a) Payments pursuant to this section shall be reduced to the extent that the period of incarceration for which the petitioner seeks payment was attributable to a separate and lawful conviction.

(b) (i) Payments pursuant to this section shall be tolled upon the commencement of any period of incarceration due to the petitioner's subsequent conviction of a felony and shall resume upon the conclusion of that period of incarceration.

(ii) As used in this section, "felony" means a criminal offense classified as a felony under Title 76, Chapter 3, Punishments, or conduct that would constitute a felony if committed in Utah.

(c) The reduction of payments pursuant to Subsection (3)(a) or the tolling of payments pursuant to Subsection (3)(b) shall be determined by the same court that finds a petitioner to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.

(4) (a) A person is ineligible for any payments under this part if the person was already serving a prison sentence in another jurisdiction at the time of the conviction of the crime for which that person has been found factually innocent pursuant to Part 3, Postconviction Testing of DNA, or this part, and that person is to be returned to that other jurisdiction upon release for further incarceration on the prior conviction.

(b) Ineligibility for any payments pursuant to this Subsection (4) shall be determined by the same court that finds a person to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.

(5) Payments pursuant to this section:

(a) are not subject to any Utah state taxes; and

(b) may not be offset by any expenses incurred by the state or any political subdivision of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or provide medical services for the petitioner.

(6) If a court finds a petitioner to be factually innocent under Part 3,

Postconviction Testing of DNA, or this part, the court shall also:

(a) issue an order of expungement of the petitioner's criminal record for all acts in the charging document upon which the payment under this part is based; and

(b) provide a letter to the petitioner explaining that the petitioner's conviction has been vacated on the grounds of factual innocence and indicating that the petitioner did not commit the crime or crimes for which the petitioner was convicted and was later found to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.

(7) A petitioner found to be factually innocent under Part 3, Postconviction Testing of DNA, or this part shall have access to the same services and programs available to Utah citizens generally as though the conviction for which the petitioner was found to be factually innocent had never occurred.

(8) Payments pursuant to this part constitute a full and conclusive resolution of the petitioner's claims on the specific issue of factual innocence. Pre-judgment interest may not be awarded in addition to the payments provided under this part.

Amended by Chapter 220, 2012 General Session

78B-10-101. Title.

This chapter is known as the "Utah Uniform Mediation Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-102. Definitions.

As used in this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means conduct or a statement, whether oral, in a record, verbal, or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who is neutral and conducts a mediation.

(5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(6) "Person" means an individual, corporation, estate, trust, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(7) "Proceeding" means:

(a) a judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery; or

(b) a legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that

is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-103. Scope.

(1) Except as otherwise provided in Subsection (2) or (3), this chapter applies to a mediation in which:

(a) the mediation parties are required to mediate by statute, court, or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(b) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(c) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by an entity that holds itself out as providing mediation.

(2) The chapter does not apply to a mediation:

(a) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(b) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(c) conducted by a judge as a part of the judge's official judicial duties; or

(d) conducted under the auspices of:

(i) a primary or secondary school if all the parties are students; or

(ii) a correctional institution for youths if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Sections 78B-10-104 through 78B-10-106 do not apply to the mediation or part agreed upon. However, Sections 78B-10-104 through 78B-10-106 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

Amended by Chapter 232, 2012 General Session

78B-10-104. Privilege against disclosure -- Admissibility -- Discovery.

(1) Except as otherwise provided in Section 78B-10-106, a mediation communication is privileged as provided in Subsection (2) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as

provided by Section 78B-10-105.

(2) In a proceeding, the following privileges apply:

(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-105. Waiver and preclusion of privilege.

(1) A privilege under Section 78B-10-104 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation, and:

(a) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(b) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Section 78B-10-104, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Section 78B-10-104.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-106. Exceptions to privilege.

(1) There is no privilege under Section 78B-10-104 for a mediation communication that is:

(a) in an agreement evidenced by a record signed by all parties to the agreement;

(b) available to the public under Title 63G, Chapter 2, Government Records Access and Management Act, or made during a mediation session which is open, or is required by law to be open, to the public;

(c) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(d) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(e) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) except as otherwise provided in Subsection (3), sought or offered to prove

or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(g) subject to the reporting requirements in Section 62A-3-305 or 62A-4a-403.

(2) There is no privilege under Section 78B-10-104 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that:

(a) the evidence is not otherwise available;

(b) there is a need for the evidence that substantially outweighs the interest in protecting confidentiality; and

(c) the mediation communication is sought or offered in:

(i) a court proceeding involving a felony or misdemeanor; or

(ii) except as otherwise provided in Subsection (3), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in Subsection (1)(f) or (2)(c)(ii).

(4) If a mediation communication is not privileged under Subsection (1) or (2), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under Subsection (1) or (2) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-107. Prohibited mediator reports.

(1) Except as required in Subsection (2), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

(a) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(b) a mediation communication as permitted under Section 78B-10-106; or

(c) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(3) A communication made in violation of Subsection (1) may not be considered by a court, administrative agency, or arbitrator.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-108. Confidentiality.

Unless subject to Title 52, Chapter 4, Open and Public Meetings Act, and Title 63G, Chapter 2, Government Records Access and Management Act, mediation communications are confidential to the extent agreed by the parties or provided by

other law or rule of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-109. Mediator's disclosure of conflicts of interest -- Background.

(1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) disclose any known fact to the mediation parties as soon as practical before accepting a mediation.

(2) If a mediator learns any fact described in Subsection (1)(a) after accepting a mediation, the mediator shall disclose it as soon as practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) Subsections (1), (2), (3), and (6) do not apply to an individual acting as a judge or ombudsman.

(5) This chapter does not require that a mediator have a special qualification by background or profession.

(6) A mediator must be impartial, unless after disclosure of the facts required in Subsections (1) and (2) to be disclosed, the parties agree otherwise.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-110. Participation in mediation.

An attorney or other individual designated by a party may accompany the party to, and participate in, a mediation. A waiver of participation given before the mediation may be rescinded.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-111. International commercial mediation.

(1) In this section:

(a) "International commercial mediation" means an international commercial conciliation as defined in Article 1 of the Model Law.

(b) "Model Law" means the Model Law on International Commercial Conciliation adopted by the United Nations Commission on International Trade Law on 28 June 2002 and recommended by the United Nations General Assembly in a resolution (A/RES/57/18) dated 19 November 2002.

(2) Except as otherwise provided in Subsections (3) and (4), if a mediation is an international commercial mediation, the mediation is governed by the Model Law.

(3) Unless the parties agree in accordance with Subsection 78B-10-103(3) that all or part of an international commercial mediation is not privileged, Sections

78B-10-104 through 78B-10-106 and any applicable definitions in Section 78B-10-102 of this chapter apply to the mediation and nothing in Article 10 of the Model Law derogates from Sections 78B-10-104 through 78B-10-106.

(4) If the parties to an international commercial mediation agree under Article 1, Section (7), of the Model Law that the Model Law does not apply, this chapter applies.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-112. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-113. Uniformity of application and construction.

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10-114. Application to existing agreements or referrals.

(1) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after May 1, 2006.

(2) Notwithstanding Subsection (1), on or after May 1, 2007, this chapter governs all agreements to mediate whenever made.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-10a-101. Title.

This chapter is known as "Tort Arbitration."

Enacted by Chapter 197, 2011 General Session

78B-10a-102. General provisions -- Filing -- Notice -- Limits.

(1) Except for bodily injury cases involving a motor vehicle as described in Sections 31A-22-303, 31A-22-305, and 31A-22-305.3, medical malpractice cases as described in Section 78B-3-401, and governmental claims described in Section 63G-7-401, any party to an action for personal injury or property damage as a result of tortious conduct may elect to submit all bodily injury claims and property damage claims to arbitration by filing a notice of the submission of the claim to binding arbitration in a district court if:

(a) the claimant or the claimant's representative has:

(i) previously and timely filed a complaint in a district court that includes a claim for bodily injury or property damage, or both; and

(ii) filed a notice to submit the claim to arbitration within 14 days after the complaint is answered; and

(b) the notice required under Subsection (1)(a)(ii) is filed while the action under Subsection (1)(a)(i) is still pending.

(2) All parties shall respond within 30 days to the notice either agreeing or refusing to agree to arbitration. If a party does not respond, it is considered a refusal.

(a) If all parties agree to arbitration, the arbitration shall proceed in accordance with this chapter.

(b) If the parties do not agree to arbitration, the action shall proceed to trial. The request for arbitration may not be revealed during a trial or while a damage award is being deliberated.

(3) If the parties agree to submit a bodily injury or property damage claim to arbitration under Subsection (1), the party initially requesting arbitration or the party's representative is limited to an arbitration award not to exceed $50,000.

Enacted by Chapter 197, 2011 General Session

78B-10a-103. Punitive damages.

A claim for punitive damages may not be made in an arbitration proceeding in accordance with this chapter or any subsequent proceeding, even if the claim is later resolved through a trial de novo in accordance with Section 78B-10a-108.

Enacted by Chapter 197, 2011 General Session

78B-10a-104. Rescission -- Discovery.

(1) (a) Any party who has agreed to arbitration in accordance with this chapter may rescind the agreement if the rescission is made within:

(i) 90 days after the agreement to arbitrate; and

(ii) not less than 30 days before any scheduled arbitration hearing.

(b) A person seeking to rescind an agreement to arbitrate in accordance with this chapter shall:

(i) file a notice of the rescission of the agreement to arbitrate with the district court where the matter was filed; and

(ii) send copies of the notice of the rescission of the agreement to arbitrate to all counsel of record in the action.

(c) All discovery completed in anticipation of the arbitration hearing shall be available for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of Evidence.

(d) A party who has agreed to arbitrate in accordance with this chapter and then rescinded the agreement to arbitrate may not subsequently request to arbitrate the claim again.

(2) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration process agreed to in accordance with this chapter is subject to Rule 26,

Utah Rules of Civil Procedure.

(b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be completed within 150 days after the date arbitration is elected in accordance with this chapter or the date the answer is filed, whichever is longer.

Enacted by Chapter 197, 2011 General Session

78B-10a-105. Selection of arbitrator or panel -- Costs.

(1) (a) Unless otherwise agreed to in writing by the parties, a claim submitted to arbitration shall be resolved by a single arbitrator.

(b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall agree on a single arbitrator within 90 days of the answer of the defendant.

(c) If the parties are unable to agree on a single arbitrator as required by Subsection (1)(b), a panel of three arbitrators shall be selected in accordance with Subsection (1)(d).

(d) If a panel of three arbitrators is selected:

(i) each side shall select one arbitrator; and

(ii) the arbitrators appointed under Subsection (1)(d)(i) shall jointly select one additional arbitrator to be included on the panel.

(2) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (1)(a); and

(b) if an arbitration panel is selected under Subsection (1)(d), each party shall pay:

(i) the fees and costs of the arbitrator selected by that party's side; and

(ii) an equal share of the fees and costs of the arbitrator selected under Subsection (1)(d)(ii).

Enacted by Chapter 197, 2011 General Session

78B-10a-106. Governing provisions.

(1) Except as otherwise provided in this chapter and unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted in accordance with this chapter shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(2) (a) Subject to the provisions of this chapter, the Utah Rules of Civil Procedure and Utah Rules of Evidence apply to arbitration proceedings.

(b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied with the intent of concluding the claim in a timely and cost-efficient manner.

(c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which the matter is filed.

(d) Dispositive motions shall be filed, heard, and decided by the district court prior to the arbitration proceeding in accordance with the court's scheduling order.

Enacted by Chapter 197, 2011 General Session

78B-10a-107. Decision -- Award -- Court action.

(1) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.

(2) An arbitration award issued in accordance with this chapter shall be the final resolution of all property damage or bodily injury claims between the parties and may be reduced to judgment by the court upon motion and notice unless:

(a) either party, within 20 days after service of the arbitration award:

(i) files a notice requesting a trial de novo in the district court; and

(ii) serves the nonmoving party with a copy of the notice requesting a trial de novo; or

(b) the arbitration award has been satisfied.

Enacted by Chapter 197, 2011 General Session

78B-10a-108. Trial de novo.

(1) (a) Upon filing a notice requesting a trial de novo in accordance with Subsection 78B-10a-107(2):

(i) unless otherwise stipulated to by the parties or ordered by the court, an additional 90 days shall be allowed for further discovery;

(ii) the additional discovery time under Subsection (1)(a)(i) shall run from the notice of the request for a trial de novo; and

(iii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a request for trial de novo filed in accordance with Subsection 78B-10a-107(2)(a)(i).

(2) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection 78B-10a-107(2), does not obtain a verdict that is at least $5,000 and 30% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (2)(c), the costs under Subsection (2)(a) shall include:

(i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

(ii) the costs of expert witnesses and depositions.

(c) An award of costs under this Subsection (2) may not exceed $6,000.

(3) (a) If a defendant, as the moving party in a trial de novo requested in accordance with Subsection 78B-10a-107(2), does not obtain a verdict that is at least 30% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (3)(c), the costs under Subsection (3)(a) shall include:

(i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

(ii) the costs of expert witnesses and depositions.

(c) An award of costs in accordance with this Subsection (3) may not exceed $6,000.

(4) For purposes of determining whether a party's verdict is greater or less

than the arbitration award under Subsections (2) and (3), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

(a) was not fully disclosed in writing prior to the arbitration proceeding; or

(b) was not disclosed in response to discovery contrary to the Utah Rules of Civil Procedure.

(5) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

(6) (a) If a defendant requests a trial de novo under Subsection 78B-10a-107(2), the total verdict at trial may not exceed $15,000 above any available limits of insurance coverage and the total verdict may not exceed $65,000.

(b) If a plaintiff requests a trial de novo under Subsection 78B-10a-107(2), the verdict at trial may not exceed $50,000.

Enacted by Chapter 197, 2011 General Session

78B-10a-109. Interest.

All arbitration awards issued in accordance with this chapter shall bear prejudgment interest pursuant to Sections 15-1-1 and 78B-5-824, and postjudgment interest pursuant to Section 15-1-4.

Enacted by Chapter 197, 2011 General Session

78B-11-101. Title.

This chapter is known as the "Utah Uniform Arbitration Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-102. Definitions.

As used in this chapter:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this state.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-103. Notice.

(1) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(2) A person has notice if the person has knowledge of the notice or has received notice.

(3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-104. Application.

(1) This chapter applies to any agreement to arbitrate made on or after May 6, 2002.

(2) This chapter applies to any agreement to arbitrate made before May 6, 2002, if all the parties to the agreement or to the arbitration proceeding agree on the record.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-105. Effect of agreement to arbitrate -- Nonwaivable provisions.

(1) Except as otherwise provided in Subsections (2) and (3), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) waive or agree to vary the effect of the requirements of Subsection 78B-11-106(1), 78B-11-107(1), 78B-11-118(1) or (2), or Section 78B-11-109, 78B-11-127, or 78B-11-129;

(b) agree to unreasonably restrict the right under Section 78B-11-110 to notice of the initiation of an arbitration proceeding;

(c) agree to unreasonably restrict the right under Section 78B-11-113 to disclosure of any facts by a neutral arbitrator; or

(d) waive the right under Section 78B-11-117 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or Sections 78B-11-108, 78B-11-115, 78B-11-119, 78B-11-123 through 78B-11-125, 78B-11-130, Subsection 78B-11-104(1), 78B-11-121(3) or (4), or 78B-11-126(1) or (2).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-106. Application for judicial relief.

(1) Except as otherwise provided in Section 78B-11-129, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-107. Validity of agreement to arbitrate.

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-108. Motion to compel arbitration.

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(b) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement, it may not, pursuant to Subsection (1) or (2), order the parties to arbitrate.

(4) The court may not refuse to order arbitration because the claim subject to

arbitration lacks merit or grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in Section 78B-11-128.

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-109. Provisional remedies.

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) the arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(b) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under Subsection (1) or (2).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-110. Initiation of arbitration.

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person objects for lack or insufficiency of notice under Subsection 78B-11-116(3) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-111. Consolidation of separate arbitration proceedings.

(1) Except as otherwise provided in Subsection (3), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(a) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-112. Appointment of arbitrator -- Service as a neutral arbitrator.

(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed by the court has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-113. Disclosure by arbitrator.

(1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) a financial or personal interest in the outcome of the arbitration proceeding; and

(b) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or

another arbitrator.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by Subsection (1) or (2) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under Subsection 78B-11-124(1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by Subsection (1) or (2), upon timely objection by a party, the court under Subsection 78B-11-124(1)(b) may vacate an award.

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under Subsection 78B-11-124(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under Subsection 78B-11-124(1)(b).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-114. Action by majority.

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Subsection 78B-11-116(3).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-115. Immunity of arbitrator -- Competency to testify -- Attorney fees and costs.

(1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section supplements any immunity under other law.

(3) The failure of an arbitrator to make a disclosure required by Section 78B-11-113 does not cause any loss of immunity under this section.

(4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This Subsection (4) does not apply:

(a) to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the

arbitration proceeding; or

(b) to a hearing on a motion to vacate an award under Subsection 78B-11-124(1)(a) or (b) if the movant establishes prima facie evidence that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of Subsection (4), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-116. Arbitration process.

(1) An arbitrator may conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) if all interested parties agree; or

(b) upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under Subsection (3), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 78B-11-112 to

continue the proceeding and to resolve the controversy.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-117. Representation.

A party to an arbitration proceeding may be represented by an attorney.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-118. Witnesses -- Subpoenas -- Depositions -- Discovery.

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit any discovery the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(4) If an arbitrator permits discovery under Subsection (3), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner

provided by law for enforcement of subpoenas in a civil action in this state.

(8) Upon stipulation of the parties, or where a statute or the written agreement of the parties provides that discovery shall be conducted in accordance with the Rules of Civil Procedure, an attorney may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding, enforced in the manner for enforcement of subpoenas in a civil action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-119. Judicial enforcement of preaward ruling by arbitrator.

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 78B-11-120. A prevailing party may make a motion to the court for an expedited order to confirm the award under Section 78B-11-123, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under Section 78B-11-124 or 78B-11-125.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-120. Award.

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified in the agreement, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree on the record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-121. Change of award by arbitrator.

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) on any grounds stated in Subsection 78B-11-125(1)(a) or (c);

(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) to clarify the award.

(2) A motion under Subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(4) If a motion to the court is pending under Section 78B-11-123, 78B-11-124, or 78B-11-125, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) on any grounds stated in Subsection 78B-11-125(1)(a) or (c);

(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) to clarify the award.

(5) An award modified or corrected pursuant to this section is subject to Subsection 78A-6-119(1) and Sections 78B-11-123, 78B-11-124, and 78B-11-125.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-122. Remedies -- Fees and expenses of arbitration proceeding.

(1) An arbitrator may award punitive damages or other exemplary relief if the award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if the award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by Subsections (1) and (2), an arbitrator may order any remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 78B-11-123 or for vacating an award under Section 78B-11-124.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under Subsection (1), the arbitrator shall specify in the award the basis in fact justifying, and the basis in law authorizing, the award and state separately the amount of the punitive damages or other exemplary relief.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-123. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award in a matter not pending before a court, the party may petition the court for an order confirming the award. If the notice of award is in a matter pending before the court, the party may file a motion for an order confirming the award. The court shall issue a confirming order unless the award is modified or corrected pursuant to Section 78B-11-121 or 78B-11-125 or is vacated pursuant to Section 78B-11-124.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-124. Vacating an award.

(1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was:

(i) evident partiality by an arbitrator appointed as a neutral arbitrator;

(ii) corruption by an arbitrator; or

(iii) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 78B-11-116, so as to substantially prejudice the rights of a party to the arbitration proceeding;

(d) an arbitrator exceeded the arbitrator's authority;

(e) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising an objection under Subsection 78B-11-116(3) not later than the beginning of the arbitration hearing; or

(f) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 78B-11-110 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to Section 78B-11-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section 78B-11-121, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in Subsection (1)(e), it may order a rehearing. If the award is vacated on a ground stated in Subsection (1)(a) or (b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection (1)(c), (d), or (f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in Subsection 78B-11-120(2) for an award.

(4) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-125. Modification or correction of award.

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to Section 78B-11-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section 78B-11-121, the court shall modify or correct the award if:

(a) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a motion made under Subsection (1) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(3) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-126. Judgment on award -- Attorney fees and litigation expenses.

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment conforming to the award. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On application of a prevailing party to a contested judicial proceeding under Section 78B-11-123, 78B-11-124, or 78B-11-125, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-127. Jurisdiction.

(1) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-128. Venue.

A motion pursuant to Section 78B-11-106 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-129. Appeals.

(1) An appeal may be taken from:

(a) an order denying a motion to compel arbitration;

(b) an order granting a motion to stay arbitration;

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a final judgment entered pursuant to this chapter.

(2) An appeal under this section must be taken as from an order or a judgment in a civil action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-130. Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-11-131. Effect of chapter on prior agreements or proceedings.

This act does not affect an action or proceeding commenced or right accrued before this chapter takes effect. Subject to Section 78B-11-104 of this chapter, an arbitration agreement made before May 6, 2002 shall be governed by the arbitration act in force on the date the agreement was signed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-101. Title.

This chapter is known as the "Utah Child Support Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-102. Definitions.

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78B-12-204(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative

agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Part 3, Tables.

(6) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.

(7) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.

(8) "Child support" means a base child support award, or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.

(9) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or registers a child support order under Chapter 14, Uniform Interstate Family Support Act.

(10) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

(11) "Court" means the district court or juvenile court.

(12) "Guidelines" means the directions for the calculation and application of child support in Part 2, Calculation and Adjustment.

(13) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:

(a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

(b) interest and dividends;
(c) periodic payments made under pension or retirement programs or insurance policies of any type;
(d) unemployment compensation benefits;
(e) workers' compensation benefits; and
(f) disability benefits.
(14) "Joint physical custody" means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support.
(15) "Medical expenses" means health and dental expenses and related insurance costs.
(16) "Obligee" means an individual, this state, another state, or another comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of child support or public assistance.
(17) "Obligor" means any person owing a duty of support.
(18) "Office" means the Office of Recovery Services within the Department of Human Services.
(19) "Parent" includes a natural parent, or an adoptive parent.
(20) "Split custody" means that each parent has physical custody of at least one of the children.
(21) "State" includes any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.
(22) "Temporary" means a period of time that is projected to be less than 12 months in duration.
(23) "Third party" means an agency or a person other than the biological or adoptive parent or a child who provides care, maintenance, and support to a child.
(24) "Tribunal" means the district court, the Department of Human Services, Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.
(25) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of a parent under Section 78B-12-215.
(26) "Worksheets" means the forms used to aid in calculating the base child support award.

Amended by Chapter 142, 2009 General Session

78B-12-103. District court jurisdiction.

The district court shall have jurisdiction of all proceedings brought under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-104. Continuing jurisdiction.

The court shall retain jurisdiction to modify or vacate the order of support where justice requires.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-105. Duty of parents.

(1) Every child is presumed to be in need of the support of the child's mother and father. Every mother and father shall support their children.

(2) Except as limited in a court order under Section 30-3-5, 30-4-3, or 78B-12-212:

(a) The expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other necessities are chargeable upon the property of both parents, regardless of the marital status of the parents.

(b) Either or both parents may be sued by a creditor for the expenses described in Subsection (2)(a) incurred on behalf of minor children.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-106. Ward of state -- Natural or adoptive parent has primary obligation to support -- Right of third party to recover support.

(1) A natural or an adoptive parent whose minor child has become a ward of this or any other state is not relieved of the primary obligation to support that child until the child reaches the age of majority, regardless of any agreements or legal defenses that may exist between the parents or other care providers. Any state that provides support for a child shall have the right to reimbursement.

(2) Nothing contained in this chapter may act to relieve the natural parent or adoptive parent of the primary obligation of support.

(3) A third party has the same right to recover support from the natural or adoptive parent as a custodial parent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-107. Duty of obligor regardless of presence or residence of obligee.

An obligor present or resident in this state has the duty of support as defined in this chapter regardless of the presence or residence of the obligee.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-108. Support follows the child.

(1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.

(2) Except in cases of joint physical custody and split custody as defined in Section 78B-12-102, when physical custody changes from that assumed in the original order, the parent without physical custody of a child shall be required to pay

the amount of support determined in accordance with Sections 78B-12-205 and 78B-12-212, without the need to modify the order for:

(a) the parent who has physical custody of the child;

(b) a relative to whom physical custody of the child has been voluntarily given; or

(c) the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-109. Waiver and estoppel.

(1) Waiver and estoppel shall apply only to the custodial parent when there is no order already established by a tribunal if the custodial parent freely and voluntarily waives support specifically and in writing.

(2) Waiver and estoppel may not be applied against any third party or public entity that may provide support for the child.

(3) A noncustodial parent, or alleged biological father in a paternity action, may not rely on statements made by the custodial parent of the child concerning child support unless the statements are reduced to writing and signed by both parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-110. Appeals.

Appeals may be taken from orders and judgments under this chapter as in other civil actions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-111. Court order -- Medical expenses of dependent children -- Assigning responsibility for payment -- Insurance coverage -- Income withholding.

The court shall include the following in its order:

(1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;

(2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost; and

(3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-112. Payment under child support order -- Judgment.

(1) All monthly payments of child support shall be due on the 1st day of each month pursuant to Title 62A, Chapter 11, Part 3, Child Support Services Act, Part 4,

Income Withholding in IV-D Cases, and Part 5, Income Withholding in Non-IV-D Cases.

(2) For purposes of child support services and income withholding pursuant to Title 62A, Chapter 11, Part 3 and Part 4, child support is not considered past due until the 1st day of the following month. For purposes other than those specified in Subsection (1) support shall be payable 1/2 by the 5th day of each month and 1/2 by the 20th day of that month, unless the order or decree provides for a different time for payment.

(3) Each payment or installment of child or spousal support under any support order, as defined by Section 78B-12-102, is, on and after the date it is due:

(a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (4);

(b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and

(c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (4).

(4) A child or spousal support payment under a support order may be modified with respect to any period during which a modification is pending, but only from the date of service of the pleading on the obligee, if the obligor is the petitioner, or on the obligor, if the obligee is the petitioner. If the tribunal orders that the support should be modified, the effective date of the modification shall be the month following service on the parent whose support is affected. Once the tribunal determines that a modification is appropriate, the tribunal shall order a judgment to be entered for any difference in the original order and the modified amount for the period from the service of the pleading until the final order of modification is entered.

(5) The judgment provided for in Subsection (3)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district court in accordance with Sections 78B-5-202 and 62A-11-312.5.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-113. Enforcement of right of support.

(1) (a) The obligee may enforce his right of support against the obligor. The office may proceed pursuant to this chapter or any other applicable statute on behalf of:

(i) the Department of Human Services;

(ii) any other department or agency of this state that provides public assistance, as defined by Subsection 62A-11-303(3), to enforce the right to recover public assistance; or

(iii) the obligee, to enforce the obligee's right of support against the obligor.

(b) Whenever any court action is commenced by the office to enforce payment of the obligor's support obligation, the attorney general or the county attorney of the county of residence of the obligee shall represent the office.

(2) (a) A person may not commence an action, file a pleading, or submit a written stipulation to the court, without complying with Subsection (2)(b), if the purpose

or effect of the action, pleading, or stipulation is to:

(i) establish paternity;

(ii) establish or modify a support obligation;

(iii) change the court-ordered manner of payment of support;

(iv) recover support due or owing; or

(v) appeal issues regarding child support laws.

(b) (i) When taking an action described in Subsection (2)(a), a person must file an affidavit with the court at the time the action is commenced, the pleading is filed, or the stipulation is submitted stating whether child support services have been or are being provided under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., on behalf of a child who is a subject of the action, pleading, or stipulation.

(ii) If child support services have been or are being provided, under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., the person shall mail a copy of the affidavit and a copy of the pleading or stipulation to the Office of the Attorney General, Child Support Division.

(iii) If notice is not given in accordance with this Subsection (2), the office is not bound by any decision, judgment, agreement, or compromise rendered in the action. For purposes of appeals, service must be made on the Office of the Director for the Office of Recovery Services.

(c) If IV-D services have been or are being provided, that person shall join the office as a party to the action, or mail or deliver a written request to the Office of the Attorney General, Child Support Division asking the office to join as a party to the action. A copy of that request, along with proof of service, shall be filed with the court. The office shall be represented as provided in Subsection (1)(b).

(3) Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-114. County attorney to assist obligee.

(1) The county attorney's office shall provide assistance to an obligee desiring to proceed under this chapter in the following manner:

(a) provide forms, approved by the Judicial Council of Utah, for an order of wage assignment if the obligee is not represented by legal counsel;

(b) inform the obligee of the right to file impecuniously if the obligee is unable to bear the expenses of the action and assist the obligee with such filing;

(c) advise the obligee of the available methods for service of process; and

(d) assist the obligee in expeditiously scheduling a hearing before the court.

(2) The county attorney's office may charge a fee not to exceed $25 for providing assistance to an obligee under Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-115. Husband and wife privileged communication inapplicable -- Competency of spouses.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this chapter. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-116. Social Security number in court records.

The Social Security number of any individual who is subject to a support order shall be placed in the records relating to the matter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-117. Rights are in addition to those presently existing.

The rights created in this chapter are in addition to and not in substitution to any other rights.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-201. Procedure -- Documentation -- Stipulation.

(1) In any matter in which child support is ordered, the moving party shall submit:

(a) a completed child support worksheet;

(b) the financial verification required by Subsection 78B-12-203(5);

(c) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines; and

(d) the information required under Subsection (3).

(2) (a) If the documentation of income required under Subsection (1) is not available, a verified representation of the other party's income by the moving party, based on the best evidence available, may be submitted.

(b) The evidence shall be in affidavit form and may only be offered after a copy has been provided to the other party in accordance with Utah Rules of Civil Procedure or Title 63G, Chapter 4, Administrative Procedures Act, in an administrative proceeding.

(3) Upon the entry of an order in a proceeding to establish paternity or to establish, modify, or enforce a support order, each party shall file identifying information and shall update that information as changes occur with the court that conducted the proceeding.

(a) The required identifying information shall include the person's social security number, driver's license number, residential and mailing addresses, telephone numbers, the name, address and telephone number of employers, and any other data required by the United States Secretary of Health and Human Services.

(b) Attorneys representing the office in child support services cases are not required to file the identifying information required by Subsection (3)(a).

(4) A stipulated amount for child support or combined child support and alimony is adequate under the guidelines if the stipulated child support amount or combined amount equals or exceeds the base child support award required by the

guidelines.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-202. Determination of amount of support -- Rebuttable guidelines.

(1) (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a substantial change of circumstance on the part of the obligor or obligee or adjustment under Subsection 78B-12-210(6) has been made.

(b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support, the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:

(i) is clear and unambiguous;

(ii) is self-executing;

(iii) provides for support which equals or exceeds the base child support award required by the guidelines; and

(iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.

(2) If no prior court order exists, a substantial change in circumstances has occurred, or a petition to modify an order under Subsection 78B-12-210(6) has been filed, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

(a) the standard of living and situation of the parties;

(b) the relative wealth and income of the parties;

(c) the ability of the obligor to earn;

(d) the ability of the obligee to earn;

(e) the ability of an incapacitated adult child to earn, or other benefits received by the adult child or on the adult child's behalf including Supplemental Security Income;

(f) the needs of the obligee, the obligor, and the child;

(g) the ages of the parties; and

(h) the responsibilities of the obligor and the obligee for the support of others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the guidelines described in this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-203. Determination of gross income -- Imputed income.

(1) As used in the guidelines, "gross income" includes prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous

marriages, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. If and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

(3) Notwithstanding Subsection (1), specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, SNAP benefits, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.

(c) If a parent has no recent work history or a parent's occupation is unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist and the condition is not of a temporary nature:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally unable to earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

Amended by Chapter 41, 2012 General Session

78B-12-204. Adjusted gross income.

(1) As used in this chapter, "adjusted gross income" is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered.

(2) The guidelines do not reduce the total child support award by adjusting the gross incomes of the parents for alimony ordered in the pending proceeding. In establishing alimony, the court shall consider that in determining the child support, the guidelines do not provide a deduction from gross income for alimony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-205. Calculation of obligations.

(1) Each parent's child support obligation shall be established in proportion to their adjusted gross incomes, unless the low income table is applicable. Except during periods of court-ordered parent-time as set forth in Section 78B-12-216, the parents are obligated to pay their proportionate shares of the base combined child support obligation. If physical custody of the child changes from that assumed in the original order, modification of the order is not necessary, even if only one parent is specifically ordered to pay in the order.

(2) Except in cases of joint physical custody and split custody as defined in Section 78B-12-102 and in cases where the obligor's adjusted gross income is $1,050

or less monthly, the base child support award shall be determined as follows:

(a) combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table; and

(b) calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In the case of an incapacitated adult child, any amount that the incapacitated adult child can contribute to the incapacitated adult child's support may be considered in the determination of child support and may be used to justify a reduction in the amount of support ordered, except that in the case of orders involving multiple children, the reduction shall not be greater than the effect of reducing the total number of children by one in the child support table calculation.

(4) In cases where the monthly adjusted gross income of either parent is between $650 and $1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table. If the income and number of children is found in an area of the low income table in which no amount is shown, the base combined child support obligation table is to be used.

(5) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78B-12-210(3), the amount ordered may not be less than the amount which would be ordered for up to six children.

(6) If the monthly adjusted gross income of either parent is $649 or less, the tribunal shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award may not be less than $30.

(7) The amount shown on the table is the support amount for the total number of children, not an amount per child.

(8) For all worksheets, income and support award figures shall be rounded to the nearest dollar.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-206. Income in excess of tables.

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-207. Obligation -- Adjusted gross income used.

Adjusted gross income shall be used in calculating each parent's share of the base combined child support obligation. Only income of the natural or adoptive parents of the child may be used to determine the award under these guidelines.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-208. Joint physical custody -- Obligation calculations.

In cases of joint physical custody, the base child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table.

(2) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the base combined child support obligation by each parent's percentage of combined adjusted gross income. The amounts so calculated are the base child support obligation due from each parent for support of the children.

(3) If the obligor's time with the children exceeds 110 overnights, the obligation shall be calculated further as follows:

(a) if the amount of time to be spent with the children is between 110 and 131 overnights, multiply the number of overnights over 110 by .0027, then multiply the result by the base combined child support obligation, and then subtract the result from the obligor's payment as determined by Subsection (2) to arrive at the obligor's payment; or

(b) if the amount of time to be spent with the children is 131 overnights or more, multiply the number of overnights over 130 by .0084, then multiply the result by the base combined child support obligation, and then subtract the result from the obligor's payment as determined in Subsection (3)(a) to arrive at the obligor's payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-209. Split custody -- Obligation calculations.

In cases of split custody, the base child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table. Allocate a portion of the calculated amount between the parents in proportion to the number of children for whom each parent has physical custody. The amounts so calculated are a tentative base child support obligation due each parent from the other parent for support of the child or children for whom each parent has physical custody.

(2) Multiply the tentative base child support obligation due each parent by the percentage that the other parent's adjusted gross income bears to the total combined adjusted gross income of both parents.

(3) Subtract the lesser amount in Subsection (2) from the larger amount to determine the base child support award to be paid by the parent with the greater financial obligation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-210. Application of guidelines -- Use of ordered child support.

(1) The guidelines in this chapter apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case. If an order rebuts the presumption through findings, it is considered a deviated order.

(4) The following shall be considered deviations from the guidelines, if:

(a) the order includes a written finding that it is a deviation from the guidelines;

(b) the guidelines worksheet has:

(i) the box checked for a deviation; and

(ii) an explanation as to the reason; or

(c) the deviation is made because there were more children than provided for in the guidelines table.

(5) If the amount in the order and the amount on the guidelines worksheet differ by $10 or more:

(a) the order is considered deviated; and

(b) the incomes listed on the worksheet may not be used in adjusting support for emancipation.

(6) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting a child support award, as provided in Subsection (7).

(b) Additional worksheets shall be prepared that compute the base child support award of the respective parents for the additional children. The base child support award shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(7) In a proceeding to adjust or modify an existing award, consideration of natural or adoptive children born after entry of the order and who are not in common to both parties may be applied to mitigate an increase in the award but may not be applied:

(a) for the benefit of the obligee if the credit would increase the support obligation of the obligor from the most recent order; or

(b) for the benefit of the obligor if the amount of support received by the obligee would be decreased from the most recent order.

(8) (a) If a child support order has not been issued or modified within the previous three years, a parent, legal guardian, or the office may move the court to adjust the amount of a child support order.

(b) Upon receiving a motion under Subsection (8)(a), the court shall, taking into account the best interests of the child:

(i) determine whether there is a difference between the payor's ordered support amount and the payor's support amount that would be required under the guidelines; and

(ii) if there is a difference as described in Subsection (8)(b)(i), adjust the payor's ordered support amount to the payor's support amount provided in the guidelines if:

(A) the difference is 10% or more;

(B) the difference is not of a temporary nature; and

(C) the order adjusting the payor's ordered support amount does not deviate from the guidelines.

(c) A showing of a substantial change in circumstances is not necessary for an adjustment under this Subsection (8).

(9) (a) A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances. A change in the base combined child support obligation table set forth in Section 78B-12-301 is not a substantial change in circumstances for the purposes of this Subsection (9).

(b) For purposes of this Subsection (9), a substantial change in circumstances may include:

(i) material changes in custody;

(ii) material changes in the relative wealth or assets of the parties;

(iii) material changes of 30% or more in the income of a parent;

(iv) material changes in the employment potential and ability of a parent to earn;

(v) material changes in the medical needs of the child; or

(vi) material changes in the legal responsibilities of either parent for the support of others.

(c) Upon receiving a petition under Subsection (9)(a), the court shall, taking into account the best interests of the child:

(i) determine whether a substantial change has occurred;

(ii) if a substantial change has occurred, determine whether the change results in a difference of 15% or more between the payor's ordered support amount and the payor's support amount that would be required under the guidelines; and

(iii) adjust the payor's ordered support amount to that which is provided for in the guidelines if:

(A) there is a difference of 15% or more; and

(B) the difference is not of a temporary nature.

(10) Notice of the opportunity to adjust a support order under Subsections (8) and (9) shall be included in each child support order.

Amended by Chapter 19, 2012 General Session

78B-12-211. Limitation on amount of support ordered.

(1) There is no maximum limit on the base child support award that may be

ordered using the base combined child support obligation table, using the low income table, or awarding medical expenses except under Subsection (2).

(2) If amounts under either table as provided in Part 3, Tables, in combination with the award of medical expenses exceeds 50% of the obligor's adjusted gross income, or by adding the child care costs, total child support would exceed 50% of the obligor's adjusted gross income, the presumption under Section 78B-12-215 is rebutted.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-212. Medical expenses.

(1) (a) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(b) The court shall, in accordance with Section 30-3-5, designate which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary if at any time a dependent child is covered by both parents' health, hospital, or dental insurance plans.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

(a) reasonableness of the cost;

(b) availability of a group insurance policy;

(c) coverage of the policy; and

(d) preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance unless the court finds good cause to order otherwise.

(4) The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium. In cases in which the parent does not have insurance but another member of the parent's household provides insurance coverage for the children, the parent may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium.

(5) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.

(6) The order shall, in accordance with Subsection 30-3-5(1)(b), include a cash medical support provision that requires each parent to equally share all reasonable and necessary uninsured and unreimbursed medical and dental expenses incurred for the dependent children, including but not limited to deductibles and copayments unless the court finds good cause to order otherwise.

(7) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title

IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date the parent first knew or should have known of the change.

(8) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

(9) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (7) and (8).

Amended by Chapter 285, 2010 General Session

78B-12-213. Determination of parental liability.

(1) The district court or administrative agency may issue an order determining the amount of a parent's liability for medical expenses of a dependent child when the parent:

(a) is required by a prior court or administrative order to:

(i) share those expenses with the other parent of the dependent child; or

(ii) obtain insurance for medical expenses but fails to do so; or

(b) receives direct payment from an insurer under insurance coverage obtained after the prior court or administrative order was issued.

(2) If the prior court or administrative order does not specify what proportions of the expenses are to be shared, the district court may determine the amount of liability as may be reasonable and necessary.

(3) This section applies to an order without regard to when it was issued.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-214. Child care expenses -- Expenses not incurred.

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2) (a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

(b) (i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.

(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.

(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to

recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-215. Child care costs.

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent, during extended parent-time, is working and actually incurring the child care costs.

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice.

(3) The court may impute a monthly obligation for child care costs when it imputes income to a parent who is providing child care for the minor child of both parties so that the parties are not incurring child care costs for the child. Any monthly obligation imputed under this section shall be applied towards any actual child care costs incurred within the same month for the child.

Amended by Chapter 467, 2013 General Session

78B-12-216. Reduction for extended parent-time.

(1) The base child support award shall be:

(a) reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days of extended parent-time; or

(b) 25% for each child for time periods during which the child is with the noncustodial parent by order of the court, or by written agreement of the parties for at least 12 of any 30 consecutive days of extended parent-time.

(2) If the dependent child is a client of cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program, any agreement by the parties for reduction of child support during extended parent-time shall be approved by the administrative agency.

(3) Normal parent-time and holiday visits to the custodial parent shall not be considered extended parent-time.

(4) For cases receiving IV-D child support services in accordance with Title 62A, Chapter 11, Parts 1, 3, and 4, to receive the adjustment the noncustodial parent shall provide written documentation of the extended parent-time schedule, including the beginning and ending dates, to the Office of Recovery Services in the form of either a court order or a voluntary written agreement between the parties.

(5) If the noncustodial parent complies with Subsection (4), owes no past-due support, and pays the full, unadjusted amount of current child support due for the month of scheduled extended parent-time and the following month, the Office of Recovery Services shall refund the difference from the child support due to the custodial parent or the state, between the full amount of current child support received during the month of extended parent-time and the adjusted amount of current child support due:

(a) from current support received in the month following the month of scheduled extended parent-time; or

(b) from current support received in the month following the month written documentation of the scheduled extended parent-time is provided to the office, whichever occurs later.

(6) If the noncustodial parent complies with Subsection (4), owes past-due support, and pays the full, unadjusted amount of current child support due for the month of scheduled extended parent-time, the Office of Recovery Services shall apply the difference, from the child support due to the custodial parent or the state, between the full amount of current child support received during the month of extended parent-time and the adjusted amount of current child support due, to the past-due support obligation in the case.

(7) For cases not receiving IV-D child support services in accordance with Title 62A, Chapter 11, Parts 1, 3, and 4, any potential adjustment of the support payment during the month of extended visitation or any refund that may be due to the noncustodial parent from the custodial parent, shall be resolved between the parents or through the court without involvement by the Office of Recovery Services.

(8) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

(9) The reduction in this section does not apply to parents with joint physical custody obligations calculated in accordance with Section 78B-12-208.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-217. Award of tax exemption for dependent children.

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis.

(2) In awarding the exemption, the court or administrative agency shall consider:

(a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and

(b) among other factors, the relative tax benefit to each parent.

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent.

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-218. Accountability of support provided to benefit child -- Accounting.

(1) The court or administrative agency which issues the initial or modified order for child support may, upon the petition of the obligor, order prospectively the obligee to furnish an accounting of amounts provided for the child's benefit to the obligor, including an accounting or receipts.

(2) The court or administrative agency may prescribe the frequency and the form of the accounting which shall include receipts and an accounting.

(3) The obligor may petition for the accounting only if current on all child support that has been ordered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-219. Adjustment when child becomes emancipated.

(1) When a child becomes 18 years of age or graduates from high school during the child's normal and expected year of graduation, whichever occurs later, or if the child dies, marries, becomes a member of the armed forces of the United States, or is emancipated in accordance with Title 78A, Chapter 6, Part 8, Emancipation, the base child support award is automatically adjusted to the base combined child support obligation for the remaining number of children due child support, shown in the table that was used to establish the most recent order, using the incomes of the parties as specified in that order or the worksheets, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

(3) If the incomes of the parties are not specified in the most recent order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified by the issuing tribunal. If the order is deviated and the parties subsequently obtain a judicial order that adjusts the support back to the date of the emancipation of the child, the Office of Recovery Services may not be required to repay any difference in the support collected during the interim.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-12-301. Base combined child support obligation table -- Both parents.

The table in this section shall be used to:

(1) establish a child support order entered for the first time on or after January 1, 2008;

(2) modify a child support order entered for the first time on or after January 1, 2008;

(3) modify a temporary judicial child support order established on or before December 31, 2007, if the new order is entered on or after January 1, 2008; or

(4) modify a final child support order entered on or before December 31, 2007, if the modification is made on or after January 1, 2010.

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
726 -	750	138	245	286	319	351	382
751 -	775	141	252	294	328	360	392
776 -	800	146	259	301	336	370	402
801 -	825	151	265	309	345	379	412
826 -	850	155	272	317	353	389	423
851 -	875	160	279	324	362	398	433
876 -	900	165	285	332	370	407	443
901 -	925	169	292	340	379	417	453
926 -	950	174	299	348	387	426	464
951 -	975	179	305	355	396	436	474
976 -	1,000	183	312	363	405	445	484
1,001 -	1,050	193	322	374	417	459	500
1,051 -	1,100	201	335	390	435	478	520
1,101 -	1,150	210	348	405	452	497	541
1,151 -	1,200	220	362	420	469	516	561
1,201 -	1,250	229	375	436	486	535	582
1,251 -	1,300	238	388	451	503	553	602
1,301 -	1,350	248	401	467	520	572	623
1,351 -	1,400	256	414	481	536	590	642
1,401 -	1,450	265	426	495	552	607	661
1,451 -	1,500	275	438	510	568	625	680
1,501 -	1,550	284	451	524	584	643	699
1,551 -	1,600	293	463	538	600	660	718
1,601 -	1,650	303	476	553	616	678	737

1,651 -	1,700	311	488	567	632	695	757
1,701 -	1,750	320	500	581	648	713	776
1,751 -	1,800	330	513	596	664	731	795
1,801 -	1,850	339	525	610	680	748	814
1,851 -	1,900	348	538	624	696	766	833
1,901 -	1,950	358	550	638	712	783	852
1,951 -	2,000	366	562	652	727	800	870
2,001 -	2,100	385	580	673	750	825	898
2,101 -	2,200	399	604	701	781	859	935
2,201 -	2,300	410	628	728	812	893	972
2,301 -	2,400	420	652	756	843	927	1,009
2,401 -	2,500	431	676	784	874	961	1,046
2,501 -	2,600	443	700	811	904	995	1,082
2,601 -	2,700	453	723	838	934	1,028	1,118
2,701 -	2,800	464	747	865	964	1,060	1,154
2,801 -	2,900	475	770	891	994	1,093	1,189
2,901 -	3,000	485	794	918	1,024	1,126	1,225
3,001 -	3,100	496	817	945	1,054	1,159	1,261
3,101 -	3,200	508	838	970	1,081	1,189	1,294
3,201 -	3,300	518	859	994	1,108	1,219	1,326
3,301 -	3,400	529	881	1,018	1,135	1,248	1,358
3,401 -	3,500	539	902	1,042	1,162	1,278	1,391
3,501 -	3,600	548	923	1,066	1,189	1,308	1,423
3,601 -	3,700	555	944	1,090	1,216	1,337	1,455
3,701 -	3,800	564	965	1,115	1,243	1,367	1,487
3,801 -	3,900	573	985	1,138	1,269	1,396	1,519
3,901 -	4,000	581	1,004	1,160	1,294	1,423	1,548
4,001 -	4,100	590	1,024	1,182	1,318	1,450	1,577

	4,101 -	4,200	599	1,043	1,204	1,342	1,477	1,607
	4,201 -	4,300	608	1,062	1,226	1,367	1,503	1,636
	4,301 -	4,400	616	1,081	1,248	1,391	1,530	1,665
	4,401 -	4,500	624	1,101	1,270	1,416	1,557	1,694
	4,501 -	4,600	633	1,119	1,291	1,439	1,583	1,722
	4,601 -	4,700	641	1,133	1,306	1,456	1,601	1,742
	4,701 -	4,800	650	1,147	1,321	1,473	1,620	1,762
	4,801 -	4,900	659	1,161	1,336	1,489	1,638	1,783
	4,901 -	5,000	668	1,175	1,351	1,506	1,657	1,803
	5,001 -	5,100	676	1,189	1,366	1,523	1,675	1,823
	5,101 -	5,200	684	1,203	1,381	1,540	1,694	1,843
	5,201 -	5,300	693	1,217	1,396	1,557	1,712	1,863
	5,301 -	5,400	701	1,227	1,408	1,570	1,726	1,878
	5,401 -	5,500	710	1,238	1,419	1,582	1,741	1,894
	5,501 -	5,600	719	1,248	1,431	1,595	1,755	1,909
	5,601 -	5,700	728	1,259	1,442	1,608	1,769	1,925
	5,701 -	5,800	733	1,269	1,454	1,621	1,783	1,940
	5,801 -	5,900	739	1,280	1,465	1,634	1,797	1,956
	5,901 -	6,000	745	1,290	1,477	1,647	1,812	1,971
	6,001 -	6,100	751	1,302	1,490	1,661	1,827	1,988
	6,101 -	6,200	756	1,313	1,503	1,676	1,843	2,005
	6,201 -	6,300	763	1,325	1,516	1,690	1,859	2,023
	6,301 -	6,400	769	1,336	1,528	1,704	1,874	2,039
	6,401 -	6,500	775	1,347	1,540	1,717	1,889	2,055
	6,501 -	6,600	780	1,358	1,553	1,731	1,904	2,072
	6,601 -	6,700	786	1,369	1,565	1,745	1,919	2,088
	6,701 -	6,800	786	1,380	1,577	1,759	1,934	2,105
	6,801 -	6,900	841	1,391	1,590	1,772	1,950	2,121

6,901 -	7,000	850	1,402	1,602	1,786	1,965	2,138
7,001 -	7,100	859	1,413	1,614	1,800	1,980	2,154
7,101 -	7,200	868	1,417	1,618	1,804	1,985	2,159
7,201 -	7,300	876	1,420	1,621	1,807	1,988	2,163
7,301 -	7,400	883	1,423	1,624	1,811	1,992	2,167
7,401 -	7,500	888	1,426	1,627	1,814	1,996	2,171
7,501 -	7,600	894	1,429	1,630	1,818	1,999	2,175
7,601 -	7,700	899	1,432	1,633	1,821	2,003	2,179
7,701 -	7,800	904	1,436	1,636	1,824	2,007	2,184
7,801 -	7,900	910	1,439	1,639	1,828	2,011	2,188
7,901 -	8,000	915	1,442	1,642	1,831	2,014	2,192
8,001 -	8,100	921	1,445	1,646	1,835	2,018	2,196
8,101 -	8,200	926	1,448	1,649	1,838	2,022	2,200
8,201 -	8,300	933	1,451	1,652	1,842	2,026	2,204
8,301 -	8,400	938	1,454	1,655	1,845	2,029	2,208
8,401 -	8,500	944	1,460	1,661	1,852	2,037	2,216
8,501 -	8,600	949	1,475	1,678	1,871	2,058	2,240
8,601 -	8,700	954	1,491	1,696	1,891	2,080	2,263
8,701 -	8,800	960	1,506	1,714	1,911	2,102	2,287
8,801 -	8,900	965	1,522	1,732	1,931	2,124	2,311
8,901 -	9,000	971	1,537	1,749	1,951	2,146	2,334
9,001 -	9,100	976	1,553	1,767	1,970	2,167	2,358
9,101 -	9,200	983	1,568	1,785	1,990	2,189	2,382
9,201 -	9,300	988	1,584	1,803	2,010	2,211	2,405
9,301 -	9,400	994	1,599	1,820	2,030	2,233	2,429
9,401 -	9,500	999	1,614	1,838	2,049	2,254	2,453
9,501 -	9,600	1,004	1,630	1,856	2,069	2,276	2,477
9,601 -	9,700	1,010	1,645	1,874	2,089	2,298	2,500

9,701 -	9,800	1,015	1,661	1,891	2,109	2,320	2,524
9,801 -	9,900	1,021	1,673	1,905	2,124	2,336	2,542
9,901 -	10,000	1,026	1,683	1,917	2,137	2,351	2,557
10,001 -	10,100	1,033	1,694	1,928	2,150	2,365	2,573
10,101 -	10,200	1,039	1,704	1,940	2,163	2,379	2,589
10,201 -	10,300	1,045	1,715	1,951	2,176	2,394	2,604
10,301 -	10,400	1,051	1,725	1,963	2,189	2,408	2,620
10,401 -	10,500	1,058	1,736	1,975	2,202	2,422	2,635
10,501 -	10,600	1,064	1,746	1,986	2,215	2,436	2,651
10,601 -	10,700	1,070	1,757	1,998	2,228	2,451	2,666
10,701 -	10,800	1,077	1,767	2,010	2,241	2,465	2,682
10,801 -	10,900	1,083	1,778	2,021	2,254	2,479	2,697
10,901 -	11,000	1,090	1,788	2,033	2,267	2,494	2,713
11,001 -	11,100	1,096	1,799	2,045	2,280	2,508	2,729
11,101 -	11,200	1,103	1,809	2,056	2,293	2,522	2,744
11,201 -	11,300	1,109	1,820	2,068	2,306	2,537	2,760
11,301 -	11,400	1,116	1,830	2,080	2,319	2,551	2,775
11,401 -	11,500	1,123	1,841	2,091	2,332	2,565	2,791

	11,501 -	11,600	1,129	1,851	2,103	2,345	2,579	2,806
	11,601 -	11,700	1,136	1,862	2,115	2,358	2,594	2,822
	11,701 -	11,800	1,143	1,872	2,126	2,371	2,608	2,838
	11,801 -	11,900	1,150	1,882	2,138	2,383	2,622	2,852
	11,901 -	12,000	1,157	1,892	2,148	2,395	2,635	2,867
	12,001 -	12,100	1,164	1,901	2,159	2,407	2,648	2,881
	12,101 -	12,200	1,171	1,910	2,170	2,419	2,661	2,895
	12,201 -	12,300	1,178	1,919	2,180	2,431	2,674	2,910
	12,301 -	12,400	1,185	1,929	2,191	2,443	2,687	2,924
	12,401 -	12,500	1,192	1,938	2,202	2,455	2,700	2,938
	12,501 -	12,600	1,199	1,947	2,212	2,467	2,714	2,952
	12,601 -	12,700	1,206	1,956	2,223	2,479	2,727	2,967
	12,701 -	12,800	1,213	1,966	2,234	2,491	2,740	2,981
	12,801 -	12,900	1,220	1,975	2,245	2,503	2,753	2,995
	12,901 -	13,000	1,227	1,984	2,255	2,514	2,766	3,009
	13,001 -	13,100	1,233	1,993	2,265	2,525	2,778	3,022
	13,101 -	13,200	1,239	2,001	2,275	2,536	2,790	3,035

	13,201 -	13,300	1,245	2,010	2,285	2,547	2,802	3,049
	13,301 -	13,400	1,250	2,018	2,294	2,558	2,814	3,062
	13,401 -	13,500	1,256	2,027	2,304	2,569	2,826	3,075
	13,501 -	13,600	1,262	2,035	2,314	2,580	2,838	3,088
	13,601 -	13,700	1,267	2,044	2,324	2,591	2,850	3,101
	13,701 -	13,800	1,273	2,052	2,334	2,602	2,862	3,114
	13,801 -	13,900	1,279	2,061	2,344	2,613	2,875	3,127
	13,901 -	14,000	1,284	2,069	2,354	2,624	2,887	3,141
	14,001 -	14,100	1,290	2,078	2,363	2,635	2,899	3,154
	14,101 -	14,200	1,296	2,087	2,373	2,646	2,911	3,167
	14,201 -	14,300	1,301	2,095	2,383	2,657	2,923	3,180
	14,301 -	14,400	1,306	2,104	2,393	2,668	2,935	3,193
	14,401 -	14,500	1,312	2,112	2,403	2,679	2,947	3,206
	14,501 -	14,600	1,317	2,121	2,413	2,690	2,959	3,220
	14,601 -	14,700	1,323	2,129	2,423	2,701	2,971	3,233
	14,701 -	14,800	1,329	2,138	2,432	2,712	2,983	3,246
	14,801 -	14,900	1,334	2,146	2,442	2,723	2,995	3,259

	14,901 -	15,000	1,340	2,155	2,452	2,734	3,008	3,272
	15,001 -	15,100	1,345	2,163	2,461	2,744	3,018	3,284
	15,101 -	15,200	1,351	2,170	2,469	2,752	3,028	3,294
	15,201 -	15,300	1,357	2,177	2,476	2,761	3,037	3,304
	15,301 -	15,400	1,362	2,184	2,484	2,769	3,046	3,314
	15,401 -	15,500	1,368	2,191	2,491	2,778	3,056	3,325
	15,501 -	15,600	1,373	2,198	2,499	2,786	3,065	3,335
	15,601 -	15,700	1,379	2,205	2,507	2,795	3,074	3,345
	15,701 -	15,800	1,384	2,211	2,514	2,803	3,084	3,355
	15,801 -	15,900	1,390	2,218	2,522	2,812	3,093	3,365
	15,901 -	16,000	1,395	2,225	2,529	2,820	3,102	3,375
	16,001 -	16,100	1,401	2,232	2,537	2,829	3,112	3,385
	16,101 -	16,200	1,407	2,239	2,545	2,837	3,121	3,396
	16,201 -	16,300	1,412	2,246	2,552	2,846	3,130	3,406
	16,301 -	16,400	1,418	2,253	2,560	2,854	3,140	3,416
	16,401 -	16,500	1,423	2,260	2,567	2,863	3,149	3,426
	16,501 -	16,600	1,429	2,267	2,575	2,871	3,158	3,436

	16,601 -	16,700	1,434	2,274	2,583	2,880	3,168	3,446
	16,701 -	16,800	1,440	2,281	2,590	2,888	3,177	3,457
	16,801 -	16,900	1,445	2,288	2,598	2,897	3,186	3,467
	16,901 -	17,000	1,451	2,295	2,605	2,905	3,196	3,477
	17,001 -	17,100	1,456	2,302	2,613	2,914	3,205	3,487
	17,101 -	17,200	1,462	2,309	2,621	2,922	3,214	3,497
	17,201 -	17,300	1,467	2,316	2,628	2,931	3,224	3,507
	17,301 -	17,400	1,473	2,323	2,636	2,939	3,233	3,517
	17,401 -	17,500	1,478	2,330	2,643	2,947	3,242	3,528
	17,501 -	17,600	1,483	2,337	2,651	2,956	3,252	3,538
	17,601 -	17,700	1,489	2,344	2,659	2,964	3,261	3,548
	17,701 -	17,800	1,494	2,351	2,666	2,973	3,270	3,558
	17,801 -	17,900	1,499	2,358	2,674	2,981	3,280	3,568
	17,901 -	18,000	1,505	2,365	2,682	2,990	3,289	3,578
	18,001 -	18,100	1,510	2,372	2,689	2,998	3,298	3,588
	18,101 -	18,200	1,516	2,379	2,697	3,007	3,308	3,599
	18,201 -	18,300	1,520	2,386	2,704	3,015	3,317	3,609

	18,301 -	18,400	1,525	2,392	2,712	3,024	3,326	3,619
	18,401 -	18,500	1,530	2,399	2,720	3,032	3,336	3,629
	18,501 -	18,600	1,535	2,406	2,727	3,041	3,345	3,639
	18,601 -	18,700	1,540	2,413	2,735	3,049	3,354	3,649
	18,701 -	18,800	1,545	2,420	2,742	3,058	3,364	3,659
	18,801 -	18,900	1,550	2,427	2,750	3,066	3,373	3,670
	18,901 -	19,000	1,555	2,434	2,758	3,075	3,382	3,680
	19,001 -	19,100	1,560	2,441	2,765	3,083	3,391	3,690
	19,101 -	19,200	1,565	2,448	2,773	3,092	3,401	3,700
	19,201 -	19,300	1,570	2,455	2,780	3,100	3,410	3,710
	19,301 -	19,400	1,575	2,462	2,788	3,109	3,419	3,720
	19,401 -	19,500	1,580	2,469	2,796	3,117	3,429	3,731
	19,501 -	19,600	1,585	2,476	2,803	3,126	3,438	3,741
	19,601 -	19,700	1,590	2,483	2,811	3,134	3,447	3,751
	19,701 -	19,800	1,595	2,490	2,818	3,143	3,457	3,761
	19,801 -	19,900	1,600	2,497	2,826	3,151	3,466	3,771
	19,901 -	20,000	1,605	2,504	2,834	3,159	3,475	3,781

	20,001 -	22,000	1,766	2,754	3,117	3,475	3,822	4,159
	22,001 -	24,000	1,926	3,005	3,401	3,791	4,170	4,537
	24,001 -	26,000	2,087	3,255	3,684	4,107	4,518	4,915
	26,001 -	28,000	2,247	3,506	3,968	4,423	4,865	5,293
	28,001 -	30,000	2,408	3,756	4,251	4,739	5,213	5,672
	30,001 -	32,000	2,508	3,916	4,451	4,979	5,473	5,952
	32,001 -	34,000	2,608	4,076	4,651	5,219	5,733	6,232
	34,001 -	36,000	2,708	4,236	4,851	5,459	5,993	6,512
	36,001 -	38,000	2,808	4,396	5,051	5,699	6,253	6,792
	38,001 -	40,000	2,908	4,556	5,251	5,939	6,513	7,072
	40,001 -	42,000	3,008	4,716	5,451	6,179	6,773	7,352
	42,001 -	44,000	3,108	4,876	5,651	6,419	7,033	7,632
	44,001 -	46,000	3,208	5,036	5,851	6,659	7,293	7,912
	46,001 -	48,000	3,308	5,196	6,051	6,899	7,553	8,192
	48,001 -	50,000	3,408	5,356	6,251	7,139	7,813	8,472
	50,001 -	52,000	3,508	5,476	6,391	7,299	7,993	8,672
	52,001 -	54,000	3,608	5,596	6,531	7,459	8,173	8,872

	54,001 -	56,000	3,708	5,716	6,671	7,619	8,353	9,072
	56,001 -	58,000	3,808	5,836	6,811	7,779	8,533	9,272
	58,001 -	60,000	3,908	5,956	6,951	7,939	8,713	9,472
	60,001 -	62,000	4,008	6,076	7,091	8,099	8,893	9,672
	62,001 -	64,000	4,108	6,196	7,231	8,259	9,073	9,872
	64,001 -	66,000	4,208	6,316	7,371	8,419	9,253	10,072
	66,001 -	68,000	4,308	6,436	7,511	8,579	9,433	10,272
	68,001 -	70,000	4,408	6,556	7,651	8,739	9,613	10,472
	70,001 -	72,000	4,508	6,676	7,791	8,899	9,793	10,672
	72,001 -	74,000	4,608	6,796	7,931	9,059	9,973	10,872
	74,001 -	76,000	4,708	6,916	8,071	9,219	10,153	11,072
	76,001 -	78,000	4,808	7,036	8,211	9,379	10,333	11,272
	78,001 -	80,000	4,908	7,156	8,351	9,539	10,513	11,472
	80,001 -	82,000	5,008	7,276	8,491	9,699	10,693	11,672
	82,001 -	84,000	5,108	7,396	8,631	9,859	10,873	11,872
	84,001 -	86,000	5,208	7,516	8,771	10,019	11,053	12,072
	86,001 -	88,000	5,308	7,636	8,911	10,179	11,233	12,272

88,001 -	90,000	5,408	7,756	9,051	10,339	11,413	12,472
90,001 -	92,000	5,508	7,876	9,191	10,499	11,593	12,672
92,001 -	94,000	5,608	7,996	9,331	10,659	11,773	12,872
94,001 -	96,000	5,708	8,116	9,471	10,819	11,953	13,072
96,001 -	98,000	5,808	8,236	9,611	10,979	12,133	13,272
98,001 -	100,000	5,908	8,356	9,751	11,139	12,313	13,472

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 37, 2008 General Session

78B-12-302. Low income table -- Obligor parent only.

The table in this section shall be used to:

(1) establish a child support order entered for the first time on or after January 1, 2008;

(2) modify a child support order entered for the first time on or after January 1, 2008;

(3) modify a temporary judicial child support order established on or before December 31, 2007, if the new order is entered on or after January 1, 2008; or

(4) modify a final child support order entered on or before December 31, 2007, if the modification is made on or after January 1, 2010.

Monthly Combined Adj. Gross Income		Number of Children					
		1	2	3	4	5	6
From	To						
0 -	649	30	30	30	30	30	30
650 -	675	30	30	30	30	31	31
676 -	700	58	60	60	61	61	62
701 -	725	88	88	90	91	92	92
726 -	750	117	118	119	120	122	123
751 -	775		148	149	151	153	155

776 -	800	178	179	182	183	186
801 -	825	207	209	212	214	216
826 -	850	236	239	242	244	247
851 -	875	266	269	272	275	278
876 -	900		299	303	305	309
901 -	925		329	333	337	339
926 -	950			363	366	370
951 -	975			393	398	402
976 -	1,000				428	433
1,001 -	1,050					494

Enacted by Chapter 3, 2008 General Session
Amended by Chapter 37, 2008 General Session

78B-12-401. Advisory committee -- Membership -- Expiration.

(1) On or before May 1, 2012, and then on or before May 1 of every fourth year subsequently, the governor shall appoint a child support guidelines advisory committee consisting of:

(a) one representative recommended by the Office of Recovery Services;

(b) one representative recommended by the Judicial Council;

(c) two representatives recommended by the Utah State Bar Association;

(d) two representatives of noncustodial parents;

(e) two representatives of custodial parents;

(f) one representative with expertise in economics; and

(g) two representatives from diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) The term of the committee members expires one month after the report of the committee is submitted to the Legislature under Section 78B-12-402.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The committee ceases to exist no later than November 1, 2015, and then on or before November 1 of every fourth year subsequently.

Amended by Chapter 19, 2012 General Session

78B-12-402. Duties -- Report -- Staff.

(1) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(2) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1, 2015, and then on or before October 1 of every fourth year subsequently.

(3) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(4) Staff for the committee shall be provided from the existing budget of the Department of Human Services.

Amended by Chapter 19, 2012 General Session

78B-12-403. Expenses for per diem and travel.

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

(1) Section 63A-3-106;

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

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

Repealed and Re-enacted by Chapter 286, 2010 General Session

78B-13-101. Title.

This chapter is known as the "Utah Uniform Child Custody Jurisdiction and Enforcement Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-102. Definitions.

As used in this chapter:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual under 18 years of age and not married.

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or parent-time with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or parent-time with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3,

Enforcement.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

(17) "Writ of assistance" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-103. Proceedings governed by other law.

(1) For purposes of this section, "adoption proceeding" means any proceeding under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(2) This chapter does not govern:

(a) an adoption proceeding; or

(b) a proceeding pertaining to the authorization of emergency medical care for a child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-104. Application to Indian tribes.

(1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as a state of the United States for purposes of Part 1, General Provisions, and Part 2, Jurisdiction.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under the provisions of Part 3, Enforcement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-105. International application of chapter.

(1) A court of this state shall treat a foreign country as a state of the United States for purposes of applying Part 1, General Provisions, and Part 2, Jurisdiction.

(2) A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under Part 3, Enforcement.

(3) The court need not apply the provisions of this chapter when the child custody law of the other country violates fundamental principles of human rights.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-106. Binding force of child custody determination.

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 78B-13-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. The determination is conclusive as to them as to all decided issues of law and fact except to the extent the determination is modified.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-107. Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-108. Notice to persons outside state.

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for the service of

process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-109. Appearance and limited immunity.

(1) A party to a child custody proceeding who is not subject to personal jurisdiction in this state and is a responding party under Part 2, Jurisdiction, a party in a proceeding to modify a child custody determination under Part 2, Jurisdiction, or a petitioner in a proceeding to enforce or register a child custody determination under Part 3, Enforcement, may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to personal jurisdiction in this state solely by being physically present for the purpose of participating in a proceeding under this chapter. If a party is subject to personal jurisdiction in this state on a basis other than physical presence, the party may be served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under the laws of that state may be accomplished in this state.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-110. Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) A communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of that communication.

(4) Except as provided in Subsection (3), a record shall be made of the communication. The parties shall be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic

recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-111. Taking testimony in another state.

(1) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-112. Cooperation between courts -- Preservation of records.

(1) A court of this state may request the appropriate court of another state to:

(a) hold an evidentiary hearing;

(b) order a person to produce or give evidence under procedures of that state;

(c) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(d) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(e) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may:

(a) hold a hearing or enter an order described in Subsection (1); or

(b) order a person in this state to appear alone or with the child in a custody proceeding in another state.

(3) A court of this state may condition compliance with a request under Subsection (2)(b) upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the person to secure his appearance with the child in the other state.

(4) Travel and other necessary and reasonable expenses incurred under

Subsections (1) and (2) may be assessed against the parties according to the law of this state.

(5) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of these records.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-201. Initial child custody jurisdiction.

(1) Except as otherwise provided in Section 78B-13-204, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under Subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 78B-13-207 or 78B-13-208; and

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under Subsection (1)(a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 78B-13-207 or 78B-13-208; or

(d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-202. Exclusive, continuing jurisdiction.

(1) Except as otherwise provided in Section 78B-13-204, a court of this state that has made a child custody determination consistent with Section 78B-13-201 or 78B-13-203 has exclusive, continuing jurisdiction over the determination until:

(a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) a court of this state or a court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this state.

(2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under Section 78B-13-207.

(3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 78B-13-201.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-203. Jurisdiction to modify determination.

Except as otherwise provided in Section 78B-13-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Subsection 78B-13-201(1)(a) or (b) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 78B-13-202 or that a court of this state would be a more convenient forum under Section 78B-13-207; or

(2) a court of this state or a court of the other state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-204. Temporary emergency jurisdiction.

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter, and if no child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, a child custody determination made under this section becomes a final determination, if:

(a) it so provides; and

(b) this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, any order issued by a court of this state under this section shall specify in the order a

period of time which the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 78B-13-201 through 78B-13-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced, or a child custody determination has been made, by a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to Sections 78B-13-201 through 78B-13-203, upon being informed that a child custody proceeding has been commenced, or a child custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-205. Notice -- Opportunity to be heard -- Joinder.

(1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 78B-13-108 shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(2) This chapter does not govern the enforceability of a child custody determination made without notice and an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-206. Simultaneous proceedings.

(1) Except as otherwise provided in Section 78B-13-204, a court of this state may not exercise its jurisdiction under this chapter if at the time of the commencement of the proceeding a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 78B-13-207.

(2) Except as otherwise provided in Section 78B-13-204, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 78B-13-209. If the court determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the

court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(b) enjoin the parties from continuing with the proceeding for enforcement; or

(c) proceed with the modification under conditions it considers appropriate.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-207. Inconvenient forum.

(1) A court of this state that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate that a court of another state exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) the length of time the child has resided outside this state;

(c) the distance between the court in this state and the court in the state that would assume jurisdiction;

(d) the relative financial circumstances of the parties;

(e) any agreement of the parties as to which state should assume jurisdiction;

(f) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) the familiarity of the court of each state with the facts and issues of the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another

proceeding while still retaining jurisdiction over the divorce or other proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-208. Jurisdiction declined by reason of conduct.

(1) Except as otherwise provided in Section 78B-13-204 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) a court of the state otherwise having jurisdiction under Sections 78B-13-201 through 78B-13-203 determines that this state is a more appropriate forum under Section 78B-13-207; or

(c) no other state would have jurisdiction under Sections 78B-13-201 through 78B-13-203.

(2) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 78B-13-201 through 78B-13-203.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to Subsection (1), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-209. Information to be submitted to court.

(1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(a) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or parent-time with the child and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;

(b) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(c) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parent-time with, the child and, if so, the names and addresses of those persons.

(2) If the information required by Subsection (1) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in Subsection (1) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-210. Appearance of parties and child.

(1) A court of this state may order a party to a child custody proceeding who is in this state to appear before the court personally with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear physically with the child.

(2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 78B-13-108 include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child custody proceeding who is outside this state is directed to appear under Subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-301. Definitions.

As used in this part:

(1) "Petitioner" means a person who seeks enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague

Convention on the Civil Aspects of International Child Abduction.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-302. Scope -- Hague Convention Enforcement.

This chapter may be invoked to enforce:

(1) a child custody determination; and

(2) an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-303. Duty to enforce.

(1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction that was in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(2) A court may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The procedure provided by this part does not affect the availability of other remedies to enforce a child custody determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-304. Temporary parent-time.

(1) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a) a parent-time schedule made by a court of another state; or

(b) the parent-time provisions of a child custody determination of another state that does not provide for a specific parent-time schedule.

(2) If a court of this state makes an order under Subsection (1)(b), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2, Jurisdiction. The order remains in effect until an order is obtained from the other court or the period expires.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-305. Registration of child custody determination.

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by

sending to the district court in this state:

(a) a letter or other document requesting registration;

(b) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) except as otherwise provided in Section 78B-13-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or parent-time in the child custody determination sought to be registered.

(2) On receipt of the documents required by Subsection (1), the registering court shall:

(a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) serve notice upon the persons named pursuant to Subsection (1)(c) and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by Subsection (2)(b) shall state:

(a) that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) that a hearing to contest the validity of the registered determination shall be requested within 20 days after service of notice; and

(c) that failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction; or

(c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 78B-13-108 in the proceedings before the court that issued the order for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-306. Enforcement of registered determination.

(1) A court of this state may grant any relief normally available under the law of

this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify except in accordance with Part 2, Jurisdiction, a registered child custody determination of another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-307. Simultaneous proceedings.

If a proceeding for enforcement under this part has been or is commenced in this state and a court of this state determines that a proceeding to modify the determination has been commenced in another state having jurisdiction to modify the determination under Part 2, Jurisdiction, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-308. Expedited enforcement of child custody determination.

(1) A petition under this part shall be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination shall state:

(a) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision shall be enforced under this chapter or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(c) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding;

(d) the present physical address of the child and the respondent, if known; and

(e) whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(3) If the child custody determination has been registered and confirmed under Section 78B-13-305, the petition shall also state the date and place of registration.

(4) The court shall issue an order directing the respondent to appear with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child.

(5) The hearing shall be held on the next judicial day following service of process unless that date is impossible. In that event, the court shall hold the hearing

on the first day possible. The court may extend the date of hearing at the request of the petitioner.

(6) The order shall state the time and place of the hearing and shall advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under Section 78B-13-312, and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) the child custody determination has not been registered and confirmed under Section 78B-13-305, and that:

(i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 78B-13-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under Section 78B-13-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-309. Service of petition and order.

Except as otherwise provided in Section 78B-13-311, the petition and order shall be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-310. Hearing and order.

(1) Unless the court enters a temporary emergency order pursuant to Section 78B-13-204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(a) the child custody determination has not been registered and confirmed under Section 78B-13-305, and that:

(i) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 78B-13-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under Section 78B-13-305, but has been vacated, stayed, or

modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction, or federal law.

(2) The court shall award the fees, costs, and expenses authorized under Section 78B-13-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-311. Writ to take physical custody of child.

(1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a writ of assistance to take physical custody of the child if the child is likely to suffer serious imminent physical harm or removal from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this state, it may issue a writ of assistance to take physical custody of the child. The petition shall be heard within 72 hours after the writ is executed. The writ shall include the statements required by Subsection 78B-13-308(2).

(3) A writ to take physical custody of a child shall:

(a) recite the facts upon which a conclusion of serious imminent physical harm or removal from the jurisdiction is based;

(b) direct law enforcement officers to take physical custody of the child immediately; and

(c) provide for the placement of the child pending final relief.

(4) The respondent shall be served with the petition, writ, and order immediately after the child is taken into physical custody.

(5) A writ of assistance to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by the exigency of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-312. Costs, fees, and expenses.

(1) The court shall award the prevailing party, including a state, necessary and

reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court may not assess fees, costs, or expenses against a state except as otherwise provided by law other than this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-313. Recognition and enforcement.

A court of this state shall accord full faith and credit to an order made consistently with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court authorized to do so under Part 2, Jurisdiction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-314. Appeals.

An appeal may be taken from an order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 78B-13-204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-315. Role of prosecutor or attorney general.

(1) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or Attorney General may take any lawful action, including resort to a proceeding under this chapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

(a) an existing child custody determination;

(b) a request from a court in a pending child custody case;

(c) a reasonable belief that a criminal statute has been violated; or

(d) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A prosecutor or attorney general acts on behalf of the court and may not represent any party to a child custody determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-316. Role of law enforcement.

At the request of a prosecutor or the attorney general acting under Section 78B-13-315 a law enforcement officer may take any lawful action reasonably

necessary to locate a child or a party and assist a prosecutor or attorney general with responsibilities under Section 78B-13-315.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-317. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or attorney general and law enforcement officers under Section 78B-13-315 or 78B-13-316.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-318. Transitional provision.

A motion or other request for relief made in a child custody or enforcement proceeding which was commenced before the effective date of this chapter is governed by the law in effect at the time the motion or other request was made.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-101. Title.

This chapter is known as the "Uniform Interstate Family Support Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-102 (Superseded 07/01/15). Definitions.

In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child-support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or notice directed to an obligor's employer or other source of income as defined in Section 62A-11-103, to withhold support from the income of the obligor in accordance with Title 62A, Chapter

11, Part 4, Income Withholding in IV-D Cases, or Part 5, Income Withholding in Non IV-D Cases.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent who:

(a) owes or is alleged to owe a duty of support;

(b) is alleged but has not been adjudicated to be a parent of a child; or

(c) is liable under a support order.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Register" means to file a support order or judgment determining parentage in the district court.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(a) an Indian tribe; and

(b) a foreign country or political subdivision that:

(i) has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) has established a reciprocal arrangement for child-support with this state as provided in Section 78B-14-208; or

(iii) has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

(22) "Support-enforcement agency" means a public official or agency authorized to seek:

(a) enforcement of support orders or laws relating to the duty of support;

(b) establishment or modification of child-support;

(c) determination of parentage;

(d) location of obligors or their assets; or

(e) determination of the controlling child-support order.

(23) "Support order" means a judgment, decree, order, or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-103 (Superseded 07/01/15). Tribunal of state.

The district court and the Department of Human Services are the tribunals of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-104 (Superseded 07/01/15). Remedies cumulative.

(1) Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(2) This chapter does not:

(a) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(b) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or parent-time in a proceeding under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-201 (Superseded 07/01/15). Bases for jurisdiction over nonresident.

(1) In a proceeding to establish or enforce a support order or to determine

parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(g) the individual asserted parentage in the putative father registry maintained in this state by the state registrar of vital records in the Department of Health pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act; or

(h) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) The bases of personal jurisdiction set forth in Subsection (1) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child-support order of another state unless the requirements of Section 78B-14-611 or 78B-14-615 are met.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-202. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 78B-14-205, 78B-14-206, and 78B-14-211.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-203 (Superseded 07/01/15). Initiating and responding tribunal of state.

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-204 (Superseded 07/01/15). Simultaneous proceedings in another state.

(1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition is filed after a petition or comparable pleading is filed in another state

only:

(a) if the petition in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) if the contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) if relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition is filed before a petition or comparable pleading is filed in another state:

(a) if the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) if the contesting party timely challenges the exercise of jurisdiction in this state; and

(c) if relevant, the other state is the home state of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-205. Continuing, exclusive jurisdiction.

(1) A tribunal of this state that has issued a child-support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order, and:

(a) at the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(2) A tribunal of this state that has issued a child-support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(a) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(b) its order is not the controlling order.

(3) If a tribunal of another state has issued a child-support order pursuant to this chapter or a law substantially similar to this chapter which modifies a child-support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(4) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal or another state to modify a support order issued in that state.

(5) A temporary support order issued ex parte or pending resolution of a

jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-206 (Superseded 07/01/15). Enforcement and modification of support order by tribunal having continuing jurisdiction.

(1) A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(a) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(b) a money judgment for arrears of support and interest on the order accrued before a determination that an order of another state is the controlling order.

(2) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-207 (Superseded 07/01/15). Recognition of controlling child-support order.

(1) If a proceeding is brought under this chapter and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.

(2) If a proceeding is brought under this chapter, and two or more child-support orders have been issued by tribunals of this state or another state with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

(a) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(b) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls, but if an order has not been issued in the current home state of the child, the order most recently issued controls.

(c) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state shall issue a child-support order, which controls.

(3) If two or more child-support orders have been issued for the same obligor and same child, upon request of a party who is an individual or a support-enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under Subsection (2). The request may be filed with a registration for enforcement or registration for modification pursuant to Part 6, Registration, Enforcement, and Modification of Support Order, or may be filed as a separate proceeding.

(4) A request to determine which is the controlling order must be accompanied

by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(5) The tribunal that issued the controlling order under Subsection (1), (2), or (3) has continuing jurisdiction to the extent provided in Section 78B-14-205 or 78B-14-206.

(6) A tribunal of this state that determines by order which is the controlling order under Subsection (2)(a), (b), or (3) that issues a new controlling order under Subsection (2)(c), shall state in that order:

(a) the basis upon which the tribunal made its determination;

(b) the amount of prospective support, if any; and

(c) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 78B-14-209.

(7) Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child-support. A party or support-enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(8) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-208 (Superseded 07/01/15). Child-support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child-support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-209 (Superseded 07/01/15). Credit for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-210 (Superseded 07/01/15). Application to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of this state relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another state pursuant to Section 78B-14-316, communicate with a tribunal of another state pursuant to Section 78B-14-317, and obtain discovery through a tribunal of another state pursuant to Section 78B-14-318. In all other respects, Parts 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-211 (Superseded 07/01/15). Continuing, exclusive jurisdiction to modify spousal-support order.

(1) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(2) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(3) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(a) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(b) a responding tribunal to enforce or modify its own spousal-support order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-301 (Superseded 07/01/15). Proceedings under chapter.

(1) Except as otherwise provided in this chapter, this part applies to all proceedings under this chapter.

(2) An individual petitioner or a support-enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-302. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-303. Application of law of state.

Except as otherwise provided in this chapter, a responding tribunal of this state

shall:

(1) apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-304 (Superseded 07/01/15). Duties of initiating tribunal.

(1) Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support-enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, upon request, the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-305 (Superseded 07/01/15). Duties and powers of responding tribunal.

(1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to Subsection 78B-14-301(2), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(a) issue or enforce a support order, modify a child-support order, determine the controlling child-support order, or determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and

telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for parent-time.

(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(6) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-307 (Superseded 07/01/15). Duties of support-enforcement agency.

(1) A support-enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(2) A support-enforcement agency of this state that is providing services to the petitioner shall:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) within 10 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(e) within 10 days, exclusive of Saturdays, Sundays, and legal holidays, after

receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) A support-enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(a) to ensure that the order to be registered is the controlling order; or

(b) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(4) A support-enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(5) A support-enforcement agency of this state shall issue or request a tribunal of this state to issue a child-support order and an income-withholding order that redirects payment of current support, arrears, and interest if requested to do so by a support-enforcement agency of another state pursuant to Section 78B-14-319.

(6) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support-enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-308 (Superseded 07/01/15). Duty of attorney general.

(1) If the attorney general determines that the support-enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

(2) The attorney general may determine that a foreign country or political subdivision has established a reciprocal arrangement for child-support with this state and take appropriate action for notification of the determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-310 (Superseded 07/01/15). Duties of state information agency.

(1) The Office of Recovery Services is the state information agency under this chapter.

(2) The state information agency shall:

(a) compile and maintain a current list, including addresses, of the tribunals in

this state which have jurisdiction under this chapter and any support-enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of names and addresses of tribunals and support-enforcement agencies received from other states;

(c) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by law, those relating to real property, vital records, law enforcement, taxation, motor vehicles, driver's licenses, and Social Security number.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-311 (Superseded 07/01/15). Pleadings and accompanying documents.

(1) In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage, or to register and modify a support order of another state must file a petition. Unless otherwise ordered under Section 78B-14-312, the petition or accompanying documents must provide, so far as known, the name, residential address, and Social Security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, Social Security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support-enforcement agency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-312. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-313 (Superseded 07/01/15). Costs and fees.

(1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by law. Attorney fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under Part 6, Registration, Enforcement, and Modification of Support Order, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-314. Limited immunity of petitioner.

(1) Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support-enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-316 (Superseded 07/01/15). Special rules of evidence and procedure.

(1) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(2) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

(3) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

(10) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-317 (Superseded 07/01/15). Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state or foreign country or political subdivision in a record, or by telephone or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state or a foreign country or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state or foreign country or political subdivision.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-318 (Superseded 07/01/15). Assistance with discovery.

A tribunal of this state may:

(1) request a tribunal of another state to assist in obtaining discovery; and
(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-319 (Superseded 07/01/15). Receipt and disbursement of payments.

(1) A support-enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.
(2) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support-enforcement agency of this state or another state, the Office of Recovery Services or a tribunal of this state shall:
(a) direct that the support payment be made to the support-enforcement agency in the state in which the obligee is receiving services; and
(b) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.
(3) The support-enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to Subsection (2) shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-401 (Superseded 07/01/15). Petition to establish support order.

(1) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:
(a) the individual seeking the order resides in another state; or
(b) the support-enforcement agency seeking the order is located in another state.
(2) The tribunal may issue a temporary child-support order if the tribunal determines that an order is appropriate and the individual ordered to pay is:
(a) a presumed father of the child;
(b) petitioning to have his paternity adjudicated;
(c) identified as the father of the child through genetic testing;
(d) an alleged father who has declined to submit to genetic testing;
(e) shown by clear and convincing evidence to be the father of the child;
(f) an acknowledged father determined in accordance with Title 78B, Chapter 15, Part 3, Voluntary Declaration of Paternity Act;
(g) the mother of the child; or
(h) an individual who has been ordered to pay child-support in a previous proceeding and the order has not been reversed or vacated.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 78B-14-305.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support-enforcement agency, to the person defined as the obligor's employer under Title 62A, Chapter 11, Parts 4 and 5, Income Withholding, without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-502. Employer's compliance with income withholding of another state.

(1) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(2) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(3) Except as otherwise provided in Subsection (4) and Section 78B-14-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(a) the duration and amount of periodic payments of current child-support, stated as a sum certain;

(b) the person designated to receive payments and the address to which the payments are to be forwarded;

(c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) the amount of periodic payments of fees and costs for a support-enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the withholding order and forward the child-support payment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-503. Compliance with multiple income-withholding orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for the withholding and allocating income withheld for two or more obligees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-504 (Superseded 07/01/15). Immunity from civil liability.

An employer who complies with an income withholding order issued in another state in accordance with this part is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-505 (Superseded 07/01/15). Penalties for noncompliance.

An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-506. Contest by obligor.

(1) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Part 6, Registration, Enforcement, and Modification of Support Order, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(2) The obligor shall give notice of the contest to:

(a) a support-enforcement agency providing services to the obligee;

(b) each employer that has directly received an income-withholding order relating to the obligor; and

(c) the person designated to receive payments in the income-withholding order or if no person is designated, to the obligee.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-507 (Superseded 07/01/15). Administrative enforcement of orders.

(1) A party or support-enforcement agency seeking to enforce a support order

or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support-enforcement agency of this state.

(2) Upon receipt of the documents, the support-enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support-enforcement agency shall register the order pursuant to this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-601 (Superseded 07/01/15). Registration of order for enforcement.

A support order or income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-602 (Superseded 07/01/15). Procedure to register order for enforcement.

(1) A support order or income-withholding order of another state may be registered in this state by sending the following records and information to the appropriate tribunal in this state:

(a) a letter of transmittal to the tribunal requesting registration and enforcement;

(b) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(c) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(d) the name of the obligor and, if known:

(i) the obligor's address and Social Security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state not exempt from execution; and

(e) except as otherwise provided in Section 78B-14-312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(3) A petition seeking a remedy that must be affirmatively sought under law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(4) If two or more orders are in effect, the person requesting registration shall:
(a) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;
(b) specify the order alleged to be the controlling order, if any; and
(c) specify the amount of consolidated arrears, if any.
(5) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-603 (Superseded 07/01/15). Effect of registration for enforcement.
(1) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.
(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
(3) Except as otherwise provided in this part, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-604 (Superseded 07/01/15). Choice of law.
(1) Except as otherwise provided in Subsection (4), the law of the issuing state governs:
(a) the nature, extent, amount, and duration of current payments under a registered support order;
(b) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and
(c) the existence and satisfaction of other obligations under the support order.
(2) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.
(3) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.
(4) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-605 (Superseded 07/01/15). Notice of registration of order.

(1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) A notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) If the registering party asserts that two or more orders are in effect, a notice must also:

(a) identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(b) notify the nonregistering party of the right to a determination of which is the controlling order;

(c) state that the procedures provided in Subsection (2) apply to the determination of which is the controlling order; and

(d) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(4) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to Title 62A, Chapter 11, Part 4, Income Withholding In IV-D Cases.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-606 (Superseded 07/01/15). Procedure to contest validity or enforcement of registered order.

(1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 78B-14-607.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-607 (Superseded 07/01/15). Contest of registration or enforcement.

(1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) the issuing tribunal lacked personal jurisdiction over the contesting party;

(b) the order was obtained by fraud;

(c) the order has been vacated, suspended, or modified by a later order;

(d) the issuing tribunal has stayed the order pending appeal;

(e) there is a defense under the law of this state to the remedy sought;

(f) full or partial payment has been made;

(g) the statute of limitation under Section 78B-14-604 precludes enforcement of some or all of the alleged arrearages; or

(h) the alleged controlling order is not the controlling order.

(2) If a party presents evidence establishing a full or partial defense under Subsection (1), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under Subsection (1) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-608 (Superseded 07/01/15). Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-609 (Superseded 07/01/15). Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 78B-14-601, 78B-14-602, 78B-14-603, and 78B-14-604 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-610 (Superseded 07/01/15). Effect of registration for modification.

A tribunal of this state may enforce a child-support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of Section 78B-14-611, 78B-14-613, or 78B-14-615 have been met.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-611 (Superseded 07/01/15). Modification of child-support order of another state.

(1) If Section 78B-14-613 does not apply, except as otherwise provided in Section 78B-14-615, upon petition a tribunal of this state may modify a child-support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(a) the following requirements are met:

(i) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) this state is the state of residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(2) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) Except as otherwise provided in Section 78B-14-615, a tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under Section 78B-14-207 establishes the aspects of the support order which are nonmodifiable.

(4) In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(5) On issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-612. Recognition of order modified in another state.

If a child-support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to this chapter, a tribunal of this state:

(1) may enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) may provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-613. Jurisdiction to modify child support order of another state when individual parties reside in this state.

(1) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(2) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Parts 1 and 2, this part, and the procedural and substantive law of this state to the proceeding for enforcement of modification. Parts 3, 4, 5, 7, and 8 do not apply.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-614. Notice to issuing tribunal of modification.

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-615 (Superseded 07/01/15). Jurisdiction to modify child-support order of foreign country or political subdivision.

(1) If a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 78B-14-611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

(2) An order issued pursuant to this section is the controlling order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-701 (Superseded 07/01/15). Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under this chapter or a law or procedure substantially similar to this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-801. Grounds for rendition.

(1) For purposes of this part, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-802. Conditions of rendition.

(1) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is

complying with the support order.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-14-901 (Superseded 07/01/15). Uniformity of application and construction.

This chapter is a uniform act. In applying and construing it consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-101. Title.

This chapter is known as the "Utah Uniform Parentage Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-102. Definitions.

As used in this chapter:

(1) "Adjudicated father" means a man who has been adjudicated by a tribunal to be the father of a child.

(2) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.

(3) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

(a) intrauterine insemination;

(b) donation of eggs;

(c) donation of embryos;

(d) in vitro fertilization and transfer of embryos; and

(e) intracytoplasmic sperm injection.

(4) "Birth expenses" means all medical costs associated with the birth of a child, including the related expenses for the biological mother during her pregnancy and delivery.

(5) "Birth mother" means the biological mother of a child.

(6) "Child" means an individual of any age whose parentage may be determined under this chapter.

(7) "Commence" means to file the initial pleading seeking an adjudication of parentage in the appropriate tribunal of this state.

(8) "Declarant father" means a male who, along with the biological mother claims to be the genetic father of a child, and signs a voluntary declaration of paternity to establish the man's paternity.

(9) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid declaration of paternity under Part 3, Voluntary Declaration of Paternity Act, or adjudication by a tribunal.

(10) "Donor" means an individual who produces eggs or sperm used for

assisted reproduction, whether or not for consideration. The term does not include:

(a) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;

(b) a woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in Part 8, Gestational Agreement; or

(c) a parent under Part 7, Child of Assisted Reproduction, or an intended parent under Part 8, Gestational Agreement.

(11) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

(12) "Financial support" means a base child support award as defined in Section 78B-12-102, all past-due support which accrues under an order for current periodic payments, and sum certain judgments for past-due support.

(13) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

(a) deoxyribonucleic acid; or

(b) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(14) "Gestational mother" means an adult woman who gives birth to a child under a gestational agreement.

(15) "Man," as defined in this chapter, means a male individual of any age.

(16) "Medical support" means a provision in a support order that requires the purchase and maintenance of appropriate insurance for health and dental expenses of dependent children, and assigns responsibility for uninsured medical expenses.

(17) "Parent" means an individual who has established a parent-child relationship under Section 78B-15-201.

(18) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(19) "Paternity index" means the likelihood of paternity calculated by computing the ratio between:

(a) the likelihood that the tested man is the father, based on the genetic markers of the tested man and child, conditioned on the hypothesis that the tested man is the father of the child; and

(b) the likelihood that the tested man is not the father, based on the genetic markers of the tested man and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.

(20) "Presumed father" means a man who, by operation of law under Section 78B-15-204, is recognized as the father of a child until that status is rebutted or confirmed as set forth in this chapter.

(21) "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior

probability.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Signatory" means an individual who authenticates a record and is bound by its terms.

(24) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory, Native American Tribe, or insular possession subject to the jurisdiction of the United States.

(25) "Support-enforcement agency" means a public official or agency authorized under Title IV-D of the Social Security Act which has the authority to seek:

(a) enforcement of support orders or laws relating to the duty of support;

(b) establishment or modification of child support;

(c) determination of parentage; or

(d) location of child-support obligors and their income and assets.

(26) "Tribunal" means a court of law, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-103. Scope -- Choice of law.

(1) This chapter applies to determinations of parentage in this state.

(2) The tribunal shall apply the law of this state to adjudicate the parent-child relationship. The applicable law may not depend upon:

(a) the place of birth of the child; or

(b) the past or present residence of the child.

(3) This chapter may not create, enlarge, or diminish parental rights or duties under other laws of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-104. Adjudication -- Jurisdiction.

(1) The district court, the juvenile court, and the Office of Recovery Services in accordance with Section 62A-11-304.2 and Title 63G, Chapter 4, Administrative Procedures Act, are authorized to adjudicate parentage under Parts 1 through 6, and Part 9 of this chapter.

(2) The district court and the juvenile court have jurisdiction over proceedings under Parts 7 and 8.

(3) The court shall, without adjudicating paternity, dismiss a petition that is filed under this chapter by an unmarried biological father if he is not entitled to consent to the adoption of the child under Sections 78B-6-121 and 78B-6-122.

Amended by Chapter 237, 2010 General Session

78B-15-105. Protection of participants.

Proceedings under this chapter are subject to other laws of this state governing

the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, Social Security number, the child's day-care facility, or school.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-106. Determination of maternity.

Provisions of this chapter relating to determination of paternity also apply to determinations of maternity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-107. Effect.

An adjudication or declaration of paternity shall be filed with the state registrar in accordance with Section 26-2-5.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-108. Obligation to provide address.

A party to an action under this chapter has a continuing obligation to keep the tribunal informed of the party's current address.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-109. Limitation on recovery from the obligor.

The obligor's liabilities for past support are limited to the period of four years preceding the commencement of an action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-110. Duty of attorney general and county attorney.

Whenever the state commences an action under this chapter, it shall be the duty of the attorney general or the county attorney of the county where the obligee resides to represent the state. Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out his responsibilities under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-111. Default judgment.

Utah Rule of Civil Procedure 55, Default Judgment, shall apply to paternity actions commenced under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-112. Standard of proof.

The standard of proof in a trial to determine paternity is "by clear and convincing evidence."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-113. Parent-time rights of father.

(1) If the tribunal determines that the alleged father is the father, it may upon its own motion or upon motion of the father, order parent-time rights in accordance with Sections 30-3-32 through 30-3-37 as it considers appropriate under the circumstances.

(2) Parent-time rights may not be granted to a father if the child has been subsequently adopted.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-114. Social Security number in tribunal records.

The Social Security number of any individual who is subject to a paternity determination shall be placed in the records relating to the matter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-115. Settlement agreements.

An agreement of settlement with the alleged father is binding only when approved by the tribunal.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-201. Establishment of parent-child relationship.

(1) The mother-child relationship is established between a woman and a child by:

(a) the woman's having given birth to the child, except as otherwise provided in Part 8, Gestational Agreement;

(b) an adjudication of the woman's maternity;

(c) adoption of the child by the woman; or

(d) an adjudication confirming the woman as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.

(2) The father-child relationship is established between a man and a child by:

(a) an unrebutted presumption of the man's paternity of the child under Section 78B-15-204;

(b) an effective declaration of paternity by the man under Part 3, Voluntary Declaration of Paternity, unless the declaration has been rescinded or successfully challenged;

(c) an adjudication of the man's paternity;

(d) adoption of the child by the man;

(e) the man having consented to assisted reproduction by a woman under Part 7, Assisted Reproduction, which resulted in the birth of the child; or

(f) an adjudication confirming the man as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-202. No discrimination based on marital status.

A child born to parents who are not married to each other whose paternity has been determined under this chapter has the same rights under the law as a child born to parents who are married to each other.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-203. Consequences of establishment of parentage.

Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-204. Presumption of paternity.

(1) A man is presumed to be the father of a child if:

(a) he and the mother of the child are married to each other and the child is born during the marriage;

(b) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(c) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce or after a decree of separation; or

(d) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is, or could be declared, invalid, he voluntarily asserted his paternity of the child, and there is no other presumptive father of the child, and:

(i) the assertion is in a record filed with the Office of Vital Records;

(ii) he agreed to be and is named as the child's father on the child's birth certificate; or

(iii) he promised in a record to support the child as his own.

(2) A presumption of paternity established under this section may only be rebutted in accordance with Section 78B-15-607.

(3) If a child has an adjudicated father, the results of genetic testing are inadmissable to challenge paternity except as set forth in Section 78B-15-607.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-301. Declaration of paternity.

The mother of a child and a man claiming to be the genetic father of the child may sign a declaration of paternity to establish the paternity of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-302. Execution of declaration of paternity.

(1) A declaration of paternity must:

(a) be in a record;

(b) be signed, or otherwise authenticated, under penalty of perjury, by the mother and by the declarant father;

(c) be signed by the birth mother and declarant father in the presence of two witnesses who are not related by blood or marriage; and

(d) state that the child whose paternity is being declared:

(i) does not have a presumed father, or has a presumed father whose full name is stated; and

(ii) does not have another declarant or adjudicated father;

(e) state whether there has been genetic testing and, if so, that the declarant man's claim of paternity is consistent with the results of the testing; and

(f) state that the signatories understand that the declaration is the equivalent of a legal finding of paternity of the child and that a challenge to the declaration is permitted only under the limited circumstances described in Section 78B-15-307.

(2) If either the birth mother or the declarant father is a minor, the voluntary declaration must also be signed by that minor's parent or legal guardian.

(3) A declaration of paternity is void if it:

(a) states that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the Office of Vital Records in accordance with Section 78B-15-303;

(b) states that another man is a declarant or adjudicated father; or

(c) falsely denies the existence of a presumed, declarant, or adjudicated father of the child.

(4) A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

(5) The declaration of paternity shall be in a form prescribed by the Office of Vital Records and shall be accompanied with a written and verbal notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

(6) The Social Security number of any person who is subject to declaration of paternity shall be placed in the records relating to the matter.

(7) The declaration of paternity shall become an amendment to the original birth certificate. The original certificate and the declaration shall be marked as to be distinguishable. The declaration may be included as part of subsequently issued certified copies of the birth certificate. Alternatively, electronically issued copies of a

certificate may reflect the amended information and the date of the amendment only.

(8) A declaration of paternity may be completed and signed any time after the birth of the child. A declaration of paternity may not be signed or filed after consent to or relinquishment for adoption has been signed.

(9) A declaration of paternity shall be considered effective when filed and entered into a database established and maintained by the Office of Vital Records.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-303. Denial of paternity.

A presumed or declarant father may sign a denial of his paternity. The denial is valid only if:

(1) a declaration of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section 78B-15-305;

(2) the denial is in a form prescribed by and filed with the Office of Vital Records, and is signed, or otherwise authenticated, under penalty of perjury; and

(3) the presumed or declarant father has not previously:

(a) declared his paternity, unless the previous declaration has been rescinded pursuant to Section 78B-15-306 or successfully challenged pursuant to Section 78B-15-307; or

(b) been adjudicated to be the father of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-304. Rules for declaration and denial of paternity.

(1) A declaration of paternity and a denial of paternity shall be contained in a single document. If the declaration and denial are both necessary, neither is valid until both are signed and filed.

(2) A declaration of paternity or a denial of paternity may not be signed before the birth of the child.

(3) Subject to Subsection (1), a declaration of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the Office of Vital Records, whichever occurs later.

(4) A declaration of paternity or denial of paternity signed by a minor and by the minor's parent or legal guardian is valid if it is otherwise in compliance with this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-305. Effect of declaration or denial of paternity.

(1) Except as otherwise provided in Sections 78B-15-306 and 78B-15-307, a valid declaration of paternity filed with the Office of Vital Records is equivalent to a legal finding of paternity of a child and confers upon the declarant father all of the rights and duties of a parent.

(2) When a declaration of paternity is filed, it shall be recognized as a basis for a child support order without any further requirement or proceeding regarding the

establishment of paternity.

(a) The liabilities of the father include, but are not limited to, the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child.

(b) When a father declares paternity, his liability for past amounts due is limited to the period of four years immediately preceding the date that the voluntary declaration of paternity was filed.

(3) Except as otherwise provided in Sections 78B-15-306 and 78B-15-307, a valid denial of paternity by a presumed or declarant father filed with the Office of Vital Records in conjunction with a valid declaration of paternity is equivalent to a legal finding of the nonpaternity of the presumed or declarant father and discharges the presumed or declarant father from all rights and duties of a parent. If a valid denial of paternity is filed with the Office of Vital Records, the declarant or presumed father may not recover child support he paid prior to the time of filing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-306. Proceeding for rescission.

(1) A signatory may rescind a declaration of paternity or denial of paternity by filing a voluntary rescission document with the Office of Vital Records in a form prescribed by the office before the earlier of:

(a) 60 days after the effective date of the declaration or denial, as provided in Sections 78B-15-303 and 78B-15-304; or

(b) the date of notice of the first adjudicative proceeding to which the signatory is a party, before a tribunal to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) Upon receiving a voluntary rescission document from a signatory under Subsection (1), the Office of Vital Records shall provide notice of the rescission, by mail, to the other signatory at the last-known address of that signatory.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-307. Challenge after expiration of period for rescission.

(1) After the period for rescission under Section 78B-15-306 has expired, a signatory of a declaration of paternity or denial of paternity, or a support-enforcement agency, may commence a proceeding to challenge the declaration or denial only on the basis of fraud, duress, or material mistake of fact.

(2) A party challenging a declaration of paternity or denial of paternity has the burden of proof.

(3) A challenge brought on the basis of fraud or duress may be commenced at any time.

(4) A challenge brought on the basis of a material mistake of fact may be commenced within four years after the declaration is filed with the Office of Vital Records. For the purposes of this Subsection (4), if the declaration of paternity was filed with the Office of Vital Records prior to May 1, 2005, a challenge may be brought within four years after May 1, 2005.

(5) For purposes of Subsection (4), genetic test results that exclude a declarant father or that rebuttably identify another man as the father in accordance with Section 78B-15-505 constitute a material mistake of fact.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-308. Procedure for rescission or challenge.

(1) Every signatory to a declaration of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the declaration or denial.

(2) For the purpose of rescission of, or challenge to, a declaration of paternity or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the declaration or denial, effective upon the filing of the document with the Office of Vital Records.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge a declaration of paternity or denial of paternity, the tribunal may not suspend the legal responsibilities of a signatory arising from the declaration, including the duty to pay child support.

(4) A proceeding to rescind or to challenge a declaration of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under Part 6, Adjudication of Parentage.

(5) At the conclusion of a proceeding to rescind or challenge a declaration of paternity or denial of paternity, the tribunal shall order the Office of Vital Records to amend the birth record of the child, if appropriate.

(6) If the declaration is rescinded, the declarant father may not recover child support he paid prior to the entry of an order of rescission.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-309. Ratification barred.

A tribunal or administrative agency conducting a judicial or administrative proceeding may not ratify an unchallenged declaration of paternity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-310. Full faith and credit.

A tribunal of this state shall give full faith and credit to a declaration of paternity or denial of paternity effective in another state if the declaration or denial has been signed and is otherwise in compliance with the law of the other state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-311. Forms for declaration and denial of paternity and for rescission of paternity.

(1) To facilitate compliance with this part, the Office of Vital Records shall prescribe forms for the declaration, denial, and rescission of paternity.

(2) A valid declaration of paternity or denial of paternity is not affected by a later modification of the prescribed form.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-312. Release of information.

The Office of Vital Records may release information relating to the declaration of paternity or denial of paternity to a signatory of the declaration or denial and to tribunals and federal, tribal, and state support-enforcement agencies of this or another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-313. Adoption of rules.

The Office of Vital Records may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-401. Maintenance of records.

(1) The Office of Vital Records shall register the following records which are filed with the office:

(a) all declarations of paternity;

(b) all judicial and administrative determinations of paternity; and

(c) all notices of proceedings to establish paternity which are filed pursuant to Sections 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.

(2) A notice of initiation of paternity proceedings may not be accepted into the registry unless accompanied by a copy of the pleading which has been filed with the court to establish paternity.

(3) A notice of initiation of paternity proceedings may not be filed if another man is the adjudicated or declarant father.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-402. Effect of registration.

(1) An unmarried biological father who desires to be notified of a proceeding for adoption of a child must file a notice of the initiation of paternity proceedings as required by Sections 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.

(2) A registrant shall promptly notify the registry in a record of any change in the information registered. The Office of Vital Records shall incorporate all new information received into its records but need not affirmatively seek to obtain current information for incorporation in the registry.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-403. Notice of proceeding.

Notice of an adoption proceeding shall be given to unmarried biological fathers pursuant to Section 78B-6-110.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-404. Required form.

(1) The Office of Vital Records shall prepare a form to be filed with the agency. The form shall require the signature of the registrant and state that the form is signed under penalty of perjury.

(2) The form shall also state that:

(a) a timely filing of notice of the initiation of paternity proceedings which is filed pursuant to Subsection 78B-15-402(1) entitles the registrant to notice of a proceeding for adoption of the child;

(b) a timely filing does not commence a proceeding to establish paternity;

(c) the information disclosed on the form may be used against the registrant to establish paternity;

(d) services to assist in establishing paternity of a child who is not placed for adoption are available to the registrant through the Office of Recovery Services;

(e) the registrant should also file in another state if conception or birth of the child occurred in the other state;

(f) information on registries of other states is available from the Office of Vital Records; and

(g) procedures exist to remove the filing of a proceeding to establish paternity if the proceeding is dismissed, or if a finding of paternity is rescinded or set aside under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-405. Furnishing of information -- Confidentiality.

(1) The Office of Vital Records shall send a copy of the filing to a person or entity set forth in Subsection (2), who has requested a copy. The copy of the filing shall be sent to the most recent address provided by the requestor.

(2) Information contained in records which are filed pursuant to Section 78B-15-401 is confidential and may be released on request only to:

(a) a tribunal or a person designated by the tribunal;

(b) the mother of the child who is the subject of the filing;

(c) an agency authorized by other law to receive the information;

(d) a licensed child-placing agency;

(e) the Office of Recovery Services, the Office of the Attorney General, or a support-enforcement agency of another state or tribe;

(f) a party or the party's attorney of record in a proceeding under this chapter or in a proceeding for adoption of, or for termination of parental rights regarding, a child who is the subject of the filing; and

(g) the registry of paternity in another state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-406. Penalty for releasing information.

A person who intentionally or knowingly, releases confidential information from the Office of Vital Records which is filed pursuant to Section 78B-15-401 to a person or agency not authorized to receive the information under Section 78B-15-405 is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-407. Removal of registration.

The Office of Vital Records may remove a registration in accordance with rules adopted by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-408. Fees for registry.

(1) A fee may not be charged to remove a registration.

(2) Except as otherwise provided in Subsection (3), the Office of Vital Records may charge a reasonable fee for registering records pursuant to Section 78B-15-401, making a search of the registry, and for furnishing a certificate.

(3) The Office of Recovery Services, the Office of the Attorney General, and support-enforcement agencies of other states or tribes may not be required to pay the fee authorized by Subsection (2).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-409. Search of records -- Certificate.

(1) Upon the request of an individual, tribunal, or agency identified in Section 78B-15-405, the Office of Vital Records shall search its records for any registration made pursuant to Section 78B-15-401 and furnish to the requestor a certificate of search which shall be signed on behalf of the office and state that:

(a) a search has been made of the records of the Office of Vital Records; and

(b) a registration containing the information required to identify the registrant:

(i) has been found and is attached to the certificate of search; or

(ii) has not been found.

(2) A petitioner shall file the certificate of search with the tribunal in connection with a proceeding for adoption.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-410. Admissibility of information.

A certificate of search of the registry of paternity in this or another state is admissible in a proceeding for adoption of a child and, if relevant, in other legal proceedings.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-501. Scope of part.

This part governs genetic testing of an individual to determine parentage, whether the individual:

(1) voluntarily submits to testing; or

(2) is tested pursuant to an order of a tribunal or a support-enforcement agency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-502. Order for testing.

(1) Upon the motion of any party to the action, except as otherwise provided in this part and Part 6, Adjudication of Parentage, the tribunal shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(a) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

(b) denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

(2) If a request for genetic testing of a child is made before birth, the tribunal may not order in-utero testing.

(3) If two or more men are subject to an order for genetic testing, the testing may be ordered concurrently or sequentially.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-503. Requirements for genetic testing.

(1) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(a) the American Association of Blood Banks, or a successor to its functions;

(b) the American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

(c) an accrediting body designated by the federal Secretary of Health and Human Services.

(2) A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-504. Report of genetic testing.

(1) A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this part is self-authenticating.

(2) Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic

testing to be admissible without testimony:

(a) the names and photographs of the individuals whose specimens have been taken;

(b) the names of the individuals who collected the specimens;

(c) the places and dates the specimens were collected;

(d) the names of the individuals who received the specimens in the testing laboratory;

(e) the dates the specimens were received; and

(f) the finger prints of the individuals whose specimens have been taken.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-505. Genetic testing results -- Rebuttal.

(1) Under this chapter, a man is presumed to be identified as the father of a child if the genetic testing complies with this part and the results disclose that:

(a) the man has at least a 99% probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and

(b) a combined paternity index of at least 100 to 1.

(2) A man identified under Subsection (1) as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this part which:

(a) excludes the man as a genetic father of the child; or

(b) identifies another man as the possible father of the child.

(3) If an issue is raised as to whether the appropriate ethnic or racial group database was used by the testing laboratory, the testing laboratory will be asked to rerun the test using the correct ethnic or racial group database. If the testing laboratory does not have an adequate database, another testing laboratory may be engaged to perform the calculations.

(4) If a presumption of paternity is not rebutted by a second test, the tribunal shall issue an order establishing paternity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-506. Costs of genetic testing.

(1) Subject to assessment of costs under Part 6, Adjudication of Parentage, the cost of initial genetic testing shall be advanced:

(a) by a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;

(b) by the individual who made the request;

(c) as agreed by the parties; or

(d) as ordered by the tribunal.

(2) In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-507. Additional genetic testing.

The tribunal shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under Section 78B-15-505, the tribunal may not order additional testing unless the party provides advance payment for the testing. If the tribunal orders a second genetic test in accordance with this section, the additional testing must be completed within 45 days of the tribunal's order or the requesting party's objection to the first test will be automatically denied. If failure to complete the test occurs because of noncooperation of the mother or unavailability of the child, the time will be tolled.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-508. Genetic testing when specimens not available.

(1) Subject to Subsection (2), if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under extraordinary circumstances the tribunal considers to be just, the tribunal may order the following individuals to submit specimens for genetic testing:

(a) the parents of the man;

(b) brothers and sisters of the man;

(c) other children of the man and their mothers; and

(d) other relatives of the man necessary to complete genetic testing.

(2) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-509. Deceased individual.

For good cause shown, the tribunal may order genetic testing of a deceased individual.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-510. Identical brothers.

(1) The tribunal may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(2) If each brother satisfies the requirements as the identified father of the child under Section 78B-15-505 without consideration of another identical brother being identified as the father of the child, the tribunal may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-511. Confidentiality of genetic testing.

Release of the report of genetic testing for parentage is controlled by Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-601. Proceeding authorized -- Definition.

(1) An adjudicative proceeding may be maintained to determine the parentage of a child. A judicial proceeding is governed by the rules of civil procedure. An administrative proceeding is governed by Title 63G, Chapter 4, Administrative Procedures Act.

(2) For the purposes of this part, "divorce" also includes an annulment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-602. Standing to maintain proceeding.

Subject to Part 3, Voluntary Declaration of Paternity, and Sections 78B-15-607 and 78B-15-609, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the mother of the child;

(3) a man whose paternity of the child is to be adjudicated;

(4) the support-enforcement agency or other governmental agency authorized by other law;

(5) an authorized adoption agency or licensed child-placing agency;

(6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or

(7) an intended parent under Part 8, Gestational Agreement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-603. Parties to proceeding.

The following individuals shall be joined as parties in a proceeding to adjudicate parentage:

(1) the mother of the child;

(2) a man whose paternity of the child is to be adjudicated; and

(3) the state pursuant to Section 78B-12-113.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-604. Personal jurisdiction.

(1) An individual may not be adjudicated to be a parent unless the tribunal has personal jurisdiction over the individual.

(2) A tribunal of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in Section 78B-14-201 are

fulfilled, or the individual has signed a declaration of paternity.

(3) Lack of jurisdiction over one individual does not preclude the tribunal from making an adjudication of parentage binding on another individual over whom the tribunal has personal jurisdiction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-605. Venue.

Venue for a judicial proceeding to adjudicate parentage is in the county of this state in which:

(1) the child resides or is found;

(2) the respondent resides or is found if the child does not reside in this state; or

(3) a proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-606. No limitation -- Child having no declarant or adjudicated father.

A proceeding to adjudicate the parentage of a child having no declarant or adjudicated father may be commenced at any time. If initiated after the child becomes an adult, only the child may initiate the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-607. Limitation -- Child having presumed father.

(1) Paternity of a child conceived or born during a marriage with a presumed father as described in Subsection 78B-15-204(1)(a), (b), or (c), may be raised by the presumed father or the mother at any time prior to filing an action for divorce or in the pleadings at the time of the divorce of the parents.

(a) If the issue is raised prior to the adjudication, genetic testing may be ordered by the tribunal in accordance with Section 78B-15-608. Failure of the mother of the child to appear for testing may result in an order allowing a motherless calculation of paternity. Failure of the mother to make the child available may not result in a determination that the presumed father is not the father, but shall allow for appropriate proceedings to compel the cooperation of the mother. If the question of paternity has been raised in the pleadings in a divorce and the tribunal addresses the issue and enters an order, the parties are estopped from raising the issue again, and the order of the tribunal may not be challenged on the basis of material mistake of fact.

(b) If the presumed father seeks to rebut the presumption of paternity, then denial of a motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence.

(c) If the mother seeks to rebut the presumption of paternity, the mother has the burden to show by a preponderance of the evidence that it would be in the best

interests of the child to disestablish the parent-child relationship.

(2) For the presumption outside of marriage described in Subsection 78B-15-204(1)(d), the presumption may be rebutted at any time if the tribunal determines that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception.

(3) The presumption may be rebutted by:

(a) genetic test results that exclude the presumed father;

(b) genetic test results that rebuttably identify another man as the father in accordance with Section 78B-15-505;

(c) evidence that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; or

(d) an adjudication under this part.

(4) There is no presumption to rebut if the presumed father was properly served and there has been a final adjudication of the issue.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-608. Authority to deny motion for genetic testing or disregard test results.

(1) In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having a declarant father, the tribunal may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or declarant father, or if testing has been completed, the tribunal may disregard genetic test results that exclude the presumed or declarant father if the tribunal determines that:

(a) the conduct of the mother or the presumed or declarant father estops that party from denying parentage; and

(b) it would be inequitable to disrupt the father-child relationship between the child and the presumed or declarant father.

(2) In determining whether to deny a motion seeking an order for genetic testing or to disregard genetic test results under this section, the tribunal shall consider the best interest of the child, including the following factors:

(a) the length of time between the proceeding to adjudicate parentage and the time that the presumed or declarant father was placed on notice that he might not be the genetic father;

(b) the length of time during which the presumed or declarant father has assumed the role of father of the child;

(c) the facts surrounding the presumed or declarant father's discovery of his possible nonpaternity;

(d) the nature of the relationship between the child and the presumed or declarant father;

(e) the age of the child;

(f) the harm that may result to the child if presumed or declared paternity is successfully disestablished;

(g) the nature of the relationship between the child and any alleged father;

(h) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

(i) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or declarant father or the chance of other harm to the child.

(3) If the tribunal denies a motion seeking an order for genetic testing or disregards genetic test results that exclude the presumed or declarant father, it shall issue an order adjudicating the presumed or declarant father to be the father of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-609. Limitation -- Child having declarant father.

(1) If a child has a declarant father, a signatory to the declaration of paternity or denial of paternity or a support-enforcement agency may commence a proceeding seeking to rescind the declaration or denial or challenge the paternity of the child only within the time allowed under Section 78B-15-306 or 78B-15-307.

(2) A proceeding under this section is subject to the application of the principles of estoppel established in Section 78B-15-608.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-610. Joinder of judicial proceedings.

(1) Except as otherwise provided in Subsection (2), a judicial proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.

(2) A respondent may not join a proceeding described in Subsection (1) with a proceeding to adjudicate parentage brought under Title 78B, Chapter 14, Uniform Interstate Family Support Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-611. Proceeding before birth.

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

(1) service of process;

(2) discovery; and

(3) except as prohibited by Section 78B-15-502, collection of specimens for genetic testing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-612. Minor as party -- Representation.

(1) A minor is a permissible party, but is not a necessary party to a proceeding under this part.

(2) The tribunal may appoint an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902, or a private guardian ad litem under Section 78A-2-705, to represent a minor or incapacitated child if the child is a party.

Amended by Chapter 267, 2014 General Session

78B-15-613. Admissibility of results of genetic testing -- Expenses.

(1) Except as otherwise provided in Subsection (3), a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within 14 days after its receipt by the objecting party and cites specific grounds for exclusion. Unless a party files a timely objection, testimony shall be in affidavit form. The admissibility of the report is not affected by whether the testing was performed:

(a) voluntarily or pursuant to an order of the tribunal; or

(b) before or after the commencement of the proceeding.

(2) A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, video conference, deposition, or another method approved by the tribunal. Unless otherwise ordered by the tribunal, the party offering the testimony bears the expense for the expert testifying.

(3) If a child has a presumed or declarant father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(a) pursuant to Section 78B-15-503;

(b) within the time periods set forth in this chapter; and

(c) pursuant to a tribunal order or administrative process; or

(d) with the consent of both the mother and the presumed or declarant father.

(4) If a child has an adjudicated father, the results of genetic testing are inadmissible to challenge paternity except as set forth in Sections 78B-15-607 and 78B-15-608.

(5) Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than 10 days before the date of a hearing are admissible to establish:

(a) the amount of the charges billed; and

(b) that the charges were reasonable, necessary, and customary.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-614. Consequences of failing to submit to genetic testing.

(1) An order for genetic testing is enforceable by contempt.

(2) If an individual whose paternity is being determined fails to submit to genetic testing ordered by the tribunal, the tribunal for that reason may adjudicate parentage contrary to the position of that individual.

(3) Genetic testing of the mother of a child is not a condition precedent to

testing the child and a man whose paternity is being determined. If the mother is unavailable or fails to submit to genetic testing, the tribunal may order the testing of the child and every man who is potentially the father of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-615. Admission of paternity authorized.

(1) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(2) If the tribunal finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the tribunal shall issue an order adjudicating the child to be the child of the man admitting paternity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-616. Temporary order.

(1) In a proceeding under this part, the tribunal shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

(a) a presumed father of the child;

(b) petitioning to have his paternity adjudicated;

(c) identified as the father through genetic testing under Section 78B-15-505;

(d) an alleged father who has failed to submit to genetic testing;

(e) shown by clear and convincing evidence to be the father of the child; or

(f) the mother of the child.

(2) A temporary tribunal order may include provisions for custody and visitation as provided by other laws of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-617. Rules for adjudication of paternity.

The tribunal shall apply the following rules to adjudicate the paternity of a child:

(1) The paternity of a child having a presumed, declarant, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section 78B-15-505 must be adjudicated the father of the child, unless an exception is granted under Section 78B-15-608.

(3) If the tribunal finds that genetic testing under Section 78B-15-505 neither identifies nor excludes a man as the father of a child, the tribunal may not dismiss the proceeding. In that event, the tribunal shall order further testing.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man properly excluded as the father of a child by genetic testing

must be adjudicated not to be the father of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-618. Adjudication of parentage -- Jury trial prohibited.

A jury trial is prohibited to adjudicate paternity of a child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-619. Adjudication of parentage -- Hearings -- Inspection of records.

(1) On request of a party and for good cause shown, the tribunal may close a proceeding under this part.

(2) A final order in a proceeding under this part is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the tribunal for good cause.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-620. Adjudication of parentage -- Order on default.

The tribunal shall issue an order adjudicating the paternity of a man who:

(1) after service of process, is in default; and

(2) is found by the tribunal to be the father of a child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-621. Adjudication of parentage -- Dismissal for want of prosecution.

The tribunal may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-622. Order adjudicating parentage.

(1) The tribunal shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

(2) An order adjudicating parentage must identify the child by name and date of birth.

(3) Except as otherwise provided in Subsection (4), the tribunal may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs, necessary travel, and other reasonable expenses incurred in a proceeding under this part. The tribunal may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

(4) The tribunal may not assess fees, costs, or expenses against the

support-enforcement agency of this state or another state, except as provided by law.

(5) On request of a party and for good cause shown, the tribunal may order that the name of the child be changed.

(6) If the order of the tribunal is at variance with the child's birth certificate, the tribunal shall order the Office of Vital Records to issue an amended birth registration.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-623. Binding effect of determination of parentage.

(1) Except as otherwise provided in Subsection (2), a determination of parentage is binding on:

(a) all signatories to a declaration or denial of paternity as provided in Part 3, Voluntary Declaration of Paternity; and

(b) all parties to an adjudication by a tribunal acting under circumstances that satisfy the jurisdictional requirements of Section 78B-14-201.

(2) A child is not bound by a determination of parentage under this chapter unless:

(a) the determination was based on an unrescinded declaration of paternity and the declaration is consistent with the results of genetic testing;

(b) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

(c) the child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

(3) In a proceeding to dissolve a marriage, the tribunal is considered to have made an adjudication of the parentage of a child if the question of paternity is raised and the tribunal adjudicates according to Part 6, Adjudication of Parentage, and the final order:

(a) expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the husband is the father of the child; or

(b) provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

(4) The tribunal is not considered to have made an adjudication of the parentage of a child if the child was born at the time of entry of the order and other children are named as children of the marriage, but that child is specifically not named.

(5) Once the paternity of a child has been adjudicated, an individual who was not a party to the paternity proceeding may not challenge the paternity, unless:

(a) the party seeking to challenge can demonstrate a fraud upon the tribunal;

(b) the challenger can demonstrate by clear and convincing evidence that the challenger did not know about the adjudicatory proceeding or did not have a reasonable opportunity to know of the proceeding; and

(c) there would be harm to the child to leave the order in place.

(6) A party to an adjudication of paternity may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, or other judicial review.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-701. Scope.

This part does not apply to the birth of a child conceived by means of sexual intercourse, or as result of a gestational agreement as provided in Part 8, Gestational Agreement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-702. Parental status of donor.

A donor is not a parent of a child conceived by means of assisted reproduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-703. Husband's paternity of child of assisted reproduction.

If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in Section 78B-15-704, he is the father of a resulting child born to his wife.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-704. Consent to assisted reproduction.

(1) A consent to assisted reproduction by a married woman must be in a record signed by the woman and her husband. This requirement does not apply to the donation of eggs for assisted reproduction by another woman.

(2) Failure of the husband to sign a consent required by Subsection (1), before or after the birth of the child, does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treat the child as their own.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-705. Limitation on husband's dispute of paternity.

(1) Except as otherwise provided in Subsection (2), the husband of a wife who gives birth to a child by means of assisted reproduction may not challenge his paternity of the child unless:

(a) within two years after learning of the birth of the child he commences a proceeding to adjudicate his paternity; and

(b) the tribunal finds that he did not consent to the assisted reproduction, before or after the birth of the child.

(2) A proceeding to adjudicate paternity may be maintained at any time if the tribunal determines that:

(a) the husband did not provide sperm for, or before or after the birth of the child consent to, assisted reproduction by his wife;

(b) the husband and the mother of the child have not cohabited since the probable time of assisted reproduction; and

(c) the husband never openly treated the child as his own.

(3) The limitation provided in this section applies to a marriage declared invalid after assisted reproduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-706. Effect of dissolution of marriage.

(1) If a marriage is dissolved before placement of eggs, sperm, or an embryo, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.

(2) The consent of the former spouse to assisted reproduction may be revoked by that individual in a record at any time before placement of eggs, sperm, or embryos.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-707. Parental status of deceased spouse.

If a spouse dies before placement of eggs, sperm, or an embryo, the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased spouse would be a parent of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-801. Gestational agreement authorized.

(1) A prospective gestational mother, her husband if she is married, a donor or the donors, and the intended parents may enter into a written agreement providing that:

(a) the prospective gestational mother agrees to pregnancy by means of assisted reproduction;

(b) the prospective gestational mother, her husband if she is married, and the donors relinquish all rights and duties as the parents of a child conceived through assisted reproduction; and

(c) the intended parents become the parents of the child.

(2) The intended gestational mother may not currently be receiving Medicaid or any other state assistance.

(3) The intended parents shall be married, and both spouses must be parties to the gestational agreement.

(4) A gestational agreement is enforceable only if validated as provided in Section 78B-15-803.

(5) A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse or if neither intended parent is a donor.

(6) The parties to a gestational agreement shall be 21 years of age or older.

(7) The gestational mother's eggs may not be used in the assisted reproduction procedure.

(8) If the gestational mother is married, her husband's sperm may not be used in the assisted reproduction procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-802. Requirements of petition.

(1) The intended parents and the prospective gestational mother may file a petition in the district tribunal to validate a gestational agreement.

(2) A petition to validate a gestational agreement may not be maintained unless either the mother or intended parents have been residents of this state for at least 90 days.

(3) The prospective gestational mother's husband, if she is married, must join in the petition.

(4) A copy of the gestational agreement must be attached to the petition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-803. Hearing to validate gestational agreement.

(1) If the requirements of Subsection (2) are satisfied, a tribunal may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the agreement.

(2) The tribunal may issue an order under Subsection (1) only on finding that:

(a) the residence requirements of Section 78B-15-802 have been satisfied and the parties have submitted to jurisdiction of the tribunal under the jurisdictional standards of this part;

(b) medical evidence shows that the intended mother is unable to bear a child or is unable to do so without unreasonable risk to her physical or mental health or to the unborn child;

(c) unless waived by the tribunal, a home study of the intended parents has been conducted in accordance with Sections 78B-6-128 through 78B-6-131, and the intended parents meet the standards of fitness applicable to adoptive parents;

(d) all parties have participated in counseling with a licensed mental health professional as evidenced by a certificate signed by the licensed mental health professional which affirms that all parties have discussed options and consequences of the agreement and presented to the tribunal;

(e) all parties have voluntarily entered into the agreement and understand its terms;

(f) the prospective gestational mother has had at least one pregnancy and delivery and her bearing another child will not pose an unreasonable health risk to the unborn child or to the physical or mental health of the prospective gestational mother;

(g) adequate provision has been made for all reasonable health-care expense associated with the gestational agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated;

(h) the consideration, if any, paid to the prospective gestational mother is reasonable;

(i) all the parties to the agreement are 21 years of age or older;

(j) the gestational mother's eggs are not being used in the assisted reproduction procedure; and

(k) if the gestational mother is married, her husband's sperm is not being used in the assisted reproduction procedure.

(3) Whether to validate a gestational agreement is within the discretion of the tribunal, subject only to review for abuse of discretion.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-804. Inspection of records.

The proceedings, records, and identities of the individuals to a gestational agreement under this part are subject to inspection under the confidentiality standards applicable to adoptions as provided under other laws of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-805. Exclusive, continuing jurisdiction.

Subject to the jurisdictional standards of Section 78B-13-201, the tribunal conducting a proceeding under this part has exclusive, continuing jurisdiction of all matters arising out of the gestational agreement until a child born to the gestational mother during the period governed by the agreement attains the age of 180 days.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-806. Termination of gestational agreement.

(1) After issuance of an order under this part, but before the prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her husband, or either of the intended parents may terminate the gestational agreement only by giving written notice of termination to all other parties.

(2) The tribunal for good cause shown also may terminate the gestational agreement.

(3) An individual who terminates an agreement shall file notice of the termination with the tribunal. On receipt of the notice, the tribunal shall vacate the order issued under this part. An individual who does not notify the tribunal of the termination of the agreement is subject to appropriate sanctions.

(4) Neither a prospective gestational mother nor her husband, if any, is liable to the intended parents for terminating an agreement pursuant to this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-807. Parentage under validated gestational agreement.

(1) Upon birth of a child to a gestational mother, the intended parents shall file notice with the tribunal that a child has been born to the gestational mother within 300 days after assisted reproduction. Thereupon, the tribunal shall issue an order:

(a) confirming that the intended parents are the parents of the child;

(b) if necessary, ordering that the child be surrendered to the intended parents; and

(c) directing the Office of Vital Records to issue a birth certificate naming the intended parents as parents of the child.

(2) If the parentage of a child born to the gestational mother is in dispute as not the result of an assisted reproduction, the tribunal shall order genetic testing to determine the parentage of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-808. Gestational agreement -- Miscellaneous provisions.

(1) A gestational agreement may provide for payment of consideration.

(2) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or that of the embryo or fetus.

(3) After the issuance of an order under this part, subsequent marriage of the gestational mother does not affect the validity of a gestational agreement, and her husband's consent to the agreement is not required, nor is her husband a presumed father of the resulting child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-809. Effect of nonvalidated gestational agreement.

(1) A gestational agreement, whether in a record or not, which is not validated by a tribunal is not enforceable.

(2) If a birth results under a gestational agreement that is not judicially validated as provided in this part, the parent-child relationship is determined as provided in Part 2, Parent-child Relationship.

(3) The individuals who are parties to a nonvalidated gestational agreement as intended parents may be held liable for support of the resulting child, even if the agreement is otherwise unenforceable. The liability under this Subsection (3) includes assessing all expenses and fees as provided in Section 78B-15-622.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-901. Uniformity of application and construction.

This chapter is a uniform law. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-902. Transitional provision.

A proceeding to adjudicate parentage which was commenced before May 1, 2005 is governed by the law in effect at the time the proceeding was commenced.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-101. Title.

This chapter is known as the "Utah Uniform Child Abduction Prevention Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-102. Definitions.

In this chapter:

(1) "Abduction" means the wrongful removal or wrongful retention of a child.

(2) "Child" means an unemancipated individual who is less than 18 years of age.

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, visitation, or parent-time with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence.

(5) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(6) "Petition" includes a motion or its equivalent.

(7) "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

(9) "Travel document" means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or visa.

(10) "Wrongful removal" means the taking of a child that breaches rights of custody, visitation, or parent-time given or recognized under the law of this state.

(11) "Wrongful retention" means the keeping or concealing of a child that breaches rights of custody, visitation, or parent-time given or recognized under the law of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-103. Cooperation and communication among courts.

Sections 78B-13-110, 78B-13-111, and 78B-13-112 apply to cooperation and communications among courts in proceedings under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-104. Actions for abduction prevention measures.

(1) A court on its own motion may order abduction prevention measures in a

child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(2) A party to a child custody determination or another individual or entity having a right under the law of this state or any other state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this chapter.

(3) A prosecutor or public authority designated under Section 78B-13-315 may seek a warrant to take physical custody of a child under Section 78B-16-109 or other appropriate prevention measures.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-105. Jurisdiction.

(1) A petition under this chapter may be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act.

(2) A court of this state has temporary emergency jurisdiction under Section 78B-13-204 if the court finds a credible risk of abduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-106. Contents of petition.

(1) A petition under this chapter must be verified and include a copy of any existing child custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in Section 78B-16-107.

(2) Subject to Subsection 78B-13-209(5), if reasonably ascertainable, the petition must contain:

(a) the name, date of birth, and gender of the child;

(b) the customary address and current physical location of the child;

(c) the identity, customary address, and current physical location of the respondent;

(d) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;

(e) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and

(f) any other information required to be submitted to the court for a child custody determination under Section 78B-13-209.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-107. Factors to determine risk of abduction.

(1) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

(a) has previously abducted or attempted to abduct the child;

(b) has threatened to abduct the child;

(c) has recently engaged in activities that may indicate a planned abduction, including:

(i) abandoning employment;

(ii) selling a primary residence;

(iii) terminating a lease;

(iv) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;

(v) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(vi) seeking to obtain the child's birth certificate or school or medical records;

(d) has engaged in domestic violence, stalking, or child abuse or neglect;

(e) has refused to follow a child custody determination;

(f) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;

(g) has strong familial, financial, emotional, or cultural ties to another state or country;

(h) is likely to take the child to a country that:

(i) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(ii) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(A) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(B) is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(C) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(iii) poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(iv) has laws or practices that would:

(A) enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(B) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or

(C) restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(v) is included by the United States Department of State on a current list of state sponsors of terrorism;

(vi) does not have an official United States diplomatic presence in the country; or

(vii) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(i) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(j) has had an application for United States citizenship denied;

(k) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social Security card, a driver license, or other government-issued identification card or has made a misrepresentation to the United States government;

(l) has used multiple names to attempt to mislead or defraud; or

(m) has engaged in any other conduct the court considers relevant to the risk of abduction.

(2) In the hearing on a petition under this chapter, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-108. Provisions and measures to prevent abduction.

(1) If a petition is filed under this chapter, the court may enter an order which must include:

(a) the basis for the court's exercise of jurisdiction;

(b) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(c) a detailed description of each party's custody and visitation rights and residential arrangements for the child;

(d) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(e) identification of the child's country of habitual residence at the time of the issuance of the order.

(2) If, at a hearing on a petition under this chapter or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by Subsection (1) and measures and conditions, including those in Subsections (3), (4), and (5), that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody, visitation, and parent-time rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(3) An abduction prevention order may include one or more of the following:

(a) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(i) the travel itinerary of the child;

(ii) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(iii) copies of all travel documents;

(b) a prohibition of the respondent directly or indirectly:

(i) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(ii) removing or retaining the child in violation of a child custody determination;

(iii) removing the child from school or a child-care or similar facility; or

(iv) approaching the child at any location other than a site designated for supervised visitation;

(c) a requirement that a party to register the order in another state as a prerequisite to allowing the child to travel to that state;

(d) with regard to the child's passport:

(i) a direction that the petitioner place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(ii) a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(iii) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(e) as a prerequisite to exercising custody, visitation, or parent-time, a requirement that the respondent provide:

(i) to the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(ii) to the court:

(A) proof that the respondent has provided the information in Subsection (3)(e)(i); and

(B) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(iii) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that convention is in effect between the United States and the destination country, unless one of the parties objects; and

(iv) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(f) upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child custody determination issued in the United States.

(4) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(a) limit visitation or require that visitation with the child by the respondent be

supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(b) require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney fees and costs if there is an abduction; and

(c) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(5) To prevent imminent abduction of a child, a court may:

(a) issue a warrant to take physical custody of the child under Section 78B-16-109 or the law of this state other than this chapter;

(b) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this chapter or the law of this state other than this chapter; or

(c) grant any other relief allowed under the law of this state other than this chapter.

(6) The remedies provided in this chapter are cumulative and do not affect the availability of other remedies to prevent abduction.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-109. Warrant to take physical custody of child.

(1) If a petition under this chapter contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(2) The respondent on a petition under Subsection (1) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(3) An ex parte warrant under Subsection (1) to take physical custody of a child must:

(a) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(b) direct law enforcement officers to take physical custody of the child immediately;

(c) state the date and time for the hearing on the petition; and

(d) provide for the safe interim placement of the child pending further order of the court.

(4) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(5) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(6) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(7) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under Subsection (1) for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney fees, costs, and other reasonable expenses and losses arising out of the issuance of the ex parte warrant.

(8) This chapter does not affect the availability of relief allowed under the law of this state other than this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-110. Duration of abduction prevention order.

An abduction prevention order remains in effect until the earliest of:

(1) the time stated in the order;

(2) the emancipation of the child;

(3) the child's attaining 18 years of age; or

(4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under Sections 78B-13-201 through 78B-13-203.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-111. Uniformity of application and construction.

This chapter is a uniform act. In applying and construing it, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-16-112. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of the act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-17-101. Title.

This chapter is known as the "Utah Uniform Interstate Depositions and Discovery Act."

Enacted by Chapter 278, 2008 General Session

78B-17-102. Definitions.

As used in this chapter:

(1) "Foreign jurisdiction" means a state other than Utah.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(a) attend and give testimony at a deposition;

(b) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(c) permit inspection of premises under the control of the person.

Enacted by Chapter 278, 2008 General Session

78B-17-103. Scope -- Unauthorized practice of law prohibited -- Reciprocity required.

(1) Except as provided in Subsection (3), this chapter applies only to issuance, service, and enforcement of subpoenas as provided in this chapter.

(2) Except as provided in Subsection 78B-17-201(1)(b), nothing in this chapter may be construed to exempt an attorney from another state from complying with statutes and rules governing unauthorized practice of law or from the requirements contained in the Utah Rules of Civil Procedure governing limited appearance.

(3) Parties resident in another state may use the provisions of this chapter for issuance, service, or enforcement of subpoenas only if the other state has enacted this uniform act or enacted provisions substantially similar to this uniform act.

Enacted by Chapter 278, 2008 General Session

78B-17-201. Issuance of subpoena.

(1) (a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a court in the judicial district in which discovery is sought to be conducted in Utah.

(b) A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of this state.

(2) When a party submits a foreign subpoena to a clerk of court in Utah, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed.

(3) A subpoena under Subsection (2) must:

(a) incorporate the terms used in the foreign subpoena; and

(b) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

Enacted by Chapter 278, 2008 General Session

78B-17-202. Service of subpoena.

A subpoena issued by a clerk of court under Section 78B-17-201 must be served in compliance with Rule 4 and Rule 5, Utah Rules of Civil Procedure.

Enacted by Chapter 278, 2008 General Session

78B-17-203. Depositions, production, inspection, and contempt remedies for subpoenas.

Section 78B-6-301 and Utah Rules of Civil Procedure 26 through 37 and 45 apply to subpoenas issued under Section 78B-17-201.

Enacted by Chapter 278, 2008 General Session

78B-17-204. Application to court.

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under Section 78B-17-201 must comply with the rules or statutes of Utah and be submitted to the court in the judicial district in which discovery is to be conducted.

Enacted by Chapter 278, 2008 General Session

78B-17-301. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 278, 2008 General Session

78B-17-302. Application to pending actions.

This chapter applies to requests for discovery in cases pending on May 5, 2008.

Enacted by Chapter 278, 2008 General Session

78B-18-101. Title.

This chapter is known as the "Utah Uniform Unsworn Foreign Declarations Act."

Enacted by Chapter 100, 2009 General Session

78B-18-102. Definitions.

As used in this chapter:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Enacted by Chapter 100, 2009 General Session

78B-18-103. Applicability.

(1) This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States.

(2) This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Enacted by Chapter 100, 2009 General Session

78B-18-104. Validity of unsworn declaration.

(1) Except as otherwise provided in Subsection (2), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.

(2) This chapter does not apply to:

(a) depositions;

(b) oaths of office;

(c) oaths required to be given before a specified official other than a notary public;

(d) declarations to be recorded pursuant to Title 57, Real Estate; or

(e) oaths required by Section 75-2-504.

Enacted by Chapter 100, 2009 General Session

78B-18-105. Required medium.

If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Enacted by Chapter 100, 2009 General Session

78B-18-106. Form of unsworn declaration.

An unsworn declaration under this chapter must be in substantially the following form:

I declare under penalty of perjury under the law of Utah that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ___ day of _____, _____, at _____, _____ .

(date) (month) (year) (city or other location, and state) (country)

_____

(printed name)

_____

(signature)

Enacted by Chapter 100, 2009 General Session

78B-18-107. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 100, 2009 General Session

78B-18-108. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Enacted by Chapter 100, 2009 General Session

78B-19-101. Title.

This chapter may be cited as the "Utah Uniform Collaborative Law Act."

Enacted by Chapter 382, 2010 General Session

78B-19-102. Definitions.

In this chapter:

(1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(a) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(b) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(3) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(a) sign a collaborative law participation agreement; and

(b) are represented by collaborative lawyers.

(4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

(5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement.

(6) "Law firm" means:

(a) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association;

(b) lawyers employed in a legal services organization;

(c) the legal department of a corporation or other organization; or

(d) the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) "Proceeding" means:

(a) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(b) a legislative hearing or similar process.

(11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means:

(a) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or

(b) a legislative body conducting a hearing or similar process.

Enacted by Chapter 382, 2010 General Session

78B-19-103. Applicability.

This chapter applies to a collaborative law participation agreement that meets the requirements of Section 78B-19-104 signed on or after May 11, 2010.

Enacted by Chapter 382, 2010 General Session

78B-19-104. Collaborative law participation agreement -- Requirements.

(1) A collaborative law participation agreement must:

(a) be in a record;

(b) be signed by the parties;

(c) state the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;

(d) describe the nature and scope of the matter;

(e) identify the collaborative lawyer who represents each party in the process; and

(f) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

Enacted by Chapter 382, 2010 General Session

78B-19-105. Beginning and concluding a collaborative law process.

(1) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by a:

(a) resolution of a collaborative matter as evidenced by a signed record;

(b) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be

resolved in the process; or

(c) termination of the process.

(4) A collaborative law process terminates:

(a) when a party gives notice to other parties in a record that the process is ended; or

(b) when a party:

(i) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(ii) in a pending proceeding related to the matter:

(A) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(B) requests that the proceeding be put on the tribunal's calendar; or

(C) takes similar action requiring notice to be sent to the parties; or

(c) except as otherwise provided by Subsection (5), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(5) A party's collaborative lawyer shall give prompt notice to all other parties of a discharge or withdrawal, in accordance with the Rules of Civil Procedure.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by Subsection (4)(c) is sent to the parties:

(a) the unrepresented party engages a successor collaborative lawyer; and

(b) in a signed record:

(i) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(ii) the agreement is amended to identify the successor collaborative lawyer; and

(iii) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Enacted by Chapter 382, 2010 General Session

78B-19-106. Proceedings pending before tribunal -- Status report.

(1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to Subsection (3) and Sections 78B-19-107 and 78B-19-108, the filing shall include a request for a stay of the proceeding.

(2) Parties shall file promptly with the tribunal notice in a record when a

collaborative law process concludes and request the stay to be lifted. The notice may not specify any reason for termination of the process.

(3) A tribunal in which a proceeding is stayed under Subsection (1) may require parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(4) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

Enacted by Chapter 382, 2010 General Session

78B-19-107. Emergency orders.

During a collaborative law process, a court may issue emergency orders, including protective orders in accordance with Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Part 2, Child Protective Orders, to protect the health, safety, welfare, or interest of a party or member of a party's household.

Enacted by Chapter 382, 2010 General Session

78B-19-108. Approval of agreement by tribunal.

A court may approve an agreement resulting from a collaborative law process.

Enacted by Chapter 382, 2010 General Session

78B-19-109. Disclosure of information.

Except as provided by law other than this chapter, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. Parties may define the scope of disclosure during the collaborative law process.

Enacted by Chapter 382, 2010 General Session

78B-19-110. Standards of professional responsibility and mandatory reporting not affected.

This chapter does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

Enacted by Chapter 382, 2010 General Session

78B-19-111. Appropriateness of collaborative law process.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) advise the prospective party that:

(a) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(b) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(c) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by the Rules of Professional Conduct.

Enacted by Chapter 382, 2010 General Session

78B-19-112. Coercive or violent relationship.

(1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(a) the party or the prospective party requests to begin or to continue a process; and

(b) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

Enacted by Chapter 382, 2010 General Session

78B-19-113. Confidentiality of collaborative law communication.

A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this chapter.

Enacted by Chapter 382, 2010 General Session

78B-19-114. Authority of tribunal in case of noncompliance.

(1) If an agreement fails to meet the requirements of Section 78B-19-104, or a lawyer fails to comply with Section 78B-19-111 or 78B-19-112, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(a) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) reasonably believed they were participating in a collaborative law process.

(2) If a court makes the findings specified in Subsection (1), and the interests of justice require, the court may:

(a) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) apply the disqualification provisions of Sections 78B-19-105 and 78B-19-106; and

(c) apply the privileges in the Utah Rules of Evidence.

Enacted by Chapter 382, 2010 General Session

78B-19-115. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 382, 2010 General Session

78B-19-116. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.A. Sec. 7001 et seq. (2009), but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.A. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b) of that act, 15 U.S.C.A. Sec. 7003(b).

Enacted by Chapter 382, 2010 General Session