

AUTOMOBILE DEALER EDUCATION 3-HOUR CLASS MANUAL

**Produced by:
Mountainland Advanced Technology Center**

**In partnership with:
Motor Vehicle Enforcement Division
of the
Utah State Tax Commission**

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2001 New State Legislation

1. **H. B. 30 (Vehicle Towing and Reporting Requirements)**

This legislation requires towing companies to make notification to the registered vehicle owners before storage charges can start to accrue on private impound. State tow yards will be responsible for notification to the Motor Vehicle Division on state impounded vehicles even though the law enforcement agency will also do a notification. Towing services and drivers will need to have “authorized towing certificates” from the Department of Public Safety.

2. **H. B. 49 (Vehicle Suspension Lift Laws)**

This legislation amends motor vehicle frame height requirements.

3. **H. B. 63 (Off-Highway Vehicle Registration Amendments)**

This legislation makes technical changes to off-highway vehicle registration regarding the issuing of decals to off-highway vehicles.

4. **H. B. 106 (Motor Vehicle Franchise Act Amendments)**

This legislation provides for the appointment of alternate members to the Motor Vehicle Franchise Advisory Board. It also allows for an issuing of orders on an emergency basis by the executive director if it is determined that irreparable damage is likely to occur if no action is taken.

5. **H.B. 190 (Original Issue License Plate Amendments)**

This legislation modifies the Motor Vehicle Act by amending the model year for vehicles allowed to use original issue license plates from model year 1968 to year 1973.

6. **S.B. 88 (Theft of a Rental Motor Vehicle)**

This act modifies the Criminal Code by making the specific offense of theft of a rental vehicle. It makes it a criminal offense not to return a rental vehicle within 72 hours after the due date

7. **S. B. 108 (Licensure of Motor Vehicles)**

The Motor Vehicle Division will require an applicant to show proof of a valid drivers license on making application for a new registration. This does not affect new registrations of vehicles sold by motor vehicle dealers.

8. **S.B. 122 (Motor Vehicle Insurance Amendments)**

This act modifies the Insurance Code by limiting underinsured motorist insurance coverage subrogation and clarifying conditions for making an uninsured motorist claim.

**VEHICLE TOWING AND REPORTING
REQUIREMENTS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: James R. Gowans

Chad E. Bennion

This act modifies motor vehicle, public safety, and transportation provisions relating to vehicles, vessels, and outboard motors that are removed by a tow truck motor carrier. This act regulates the removal of unattended vehicles and requires reporting of towed vehicles. This act requires certification of certain tow truck operations. This act authorizes certain fees and provides criminal penalties. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

41-1a-1101, as last amended by Chapters 270 and 281, Laws of Utah 1998

41-6-44.30, as last amended by Chapter 334, Laws of Utah 2000

41-6-102, as last amended by Chapter 270, Laws of Utah 1998

41-6-116.10, as last amended by Chapter 1, Laws of Utah 1992

53-1-106, as last amended by Chapter 130, Laws of Utah 1999

53-3-106, as last amended by Chapter 334, Laws of Utah 2000

72-9-601, as renumbered and amended by Chapter 270, Laws of Utah 1998

72-9-602, as renumbered and amended by Chapter 270, Laws of Utah 1998

72-9-603, as renumbered and amended by Chapter 270, Laws of Utah 1998

73-18-12.7, as last amended by Chapter 1, Laws of Utah 1992

73-18-12.8, as enacted by Chapter 118, Laws of Utah 1987

73-18-20.1, as enacted by Chapter 216, Laws of Utah 1990

73-18-20.2, as last amended by Chapter 1, Laws of Utah 1992

ENACTS:

41-6-102.5, Utah Code Annotated 1953

41-6-102.7, Utah Code Annotated 1953

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

Section 1. Section **41-1a-1101** is amended to read:

41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.

(1)

(3) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard motor under this section shall ~~[immediately notify the division of the action]~~ comply with the provisions of Section 41-6-102.5.

~~[(4) A vehicle or vessel seized under this section shall be moved by a peace officer or by a tow truck that meets the standards established:]~~

~~[(a) by the Department of Public Safety under Subsection 41-6-102(4)(b); and]~~

~~[(b) under Title 72, Chapter 9, Motor Carrier Safety Act.]~~

Section 2. Section **41-6-44.30** is amended to read:

41-6-44.30. Seizure and impoundment of vehicles by peace officers -- Impound requirements -- Removal of vehicle by owner.

(1) ~~[(a)]~~ If a peace officer arrests or cites the operator of a vehicle for violating Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with Subsection 41-6-43(1), the officer shall seize and impound the vehicle in accordance with Section 41-6-102.5, except as provided under Subsection (2).

~~[(b) A vehicle seized and impounded under this section shall be moved by a peace officer or by a tow truck that meets the standards established:]~~

~~[(i) by the department under Subsection 41-6-102(4)(b); and]~~

~~[(ii) under Title 72, Chapter 9, Motor Carrier Safety Act.]~~

(2)

~~[(3) (a) The peace officer or agency by whom the officer is employed shall, within 24 hours after the seizure, notify, in writing, the Motor Vehicle Division of the seizure and impoundment:]~~

~~[(b) The notice shall state:]~~

~~[(i) the operator's name;]~~

~~[(ii) a description of the vehicle;]~~

~~[(iii) its identification number, if any;]~~

~~[(iv) its license number;]~~

~~[(v) the date, time, and place of impoundment;]~~

~~[(vi) the reason for impoundment; and]~~

~~[(vii) the name of the garage or place where the vehicle is stored.]~~

~~[(4) Upon receipt of notice, the Motor Vehicle Division shall give notice to the registered owner of the vehicle in the manner prescribed by Section 41-1a-114. The notice shall:]~~

~~[(a) state the date, time, and place of impoundment, the name of the person operating the vehicle at the time of seizure, if applicable, the reason for seizure and impoundment, and the name of the garage or place where the vehicle is stored;]~~

~~[(b) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle; and]~~

~~[(c) inform the registered owner of the vehicle of the conditions under Subsection (5) that must be satisfied before the vehicle is released.]~~

~~[(5) (a) The impounded vehicle shall be released after the registered owner or the owner's agent:]~~

~~[(i) makes a claim in person for release of the vehicle at any office of the State Tax Commission;]~~

~~[(ii) pays an administrative impound fee of \$200;]~~

~~[(iii) presents identification sufficient to prove ownership of the impounded vehicle; and]~~

~~[(iv) pays all towing and storage fees to the impound lot where the vehicle is stored.]~~

~~[(b) (i) Twenty-five dollars of the impound fees assessed under this Subsection (5) are dedicated credits to the Motor Vehicle Division;]~~

~~[(ii) \$84 of the impound fees assessed under this Subsection (5) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106; and]~~

~~[(iii) the remainder shall be deposited in the General Fund.]~~

~~[(6) An impounded vehicle not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, disposed of under Section 41-1a-1103. The date of impoundment is considered the date of seizure for computing the time period provided in Section 41-1a-1103.]~~

~~[(7) The registered owner of the vehicle upon the payment of all fees and charges incurred in the seizure and impoundment of the owner's vehicle has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle whose actions caused the impoundment.]~~

~~(8) Liability may not be imposed upon any peace officer, the state, or any of its political subdivisions on account of the enforcement of this section.~~

Section 3. Section **41-6-102**

41-6-102.

(1)

(2)

A] _____ peace officer may remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(b)

(c)

~~(4) (a) A peace officer who causes to be removed a vehicle under this section shall have the vehicle removed by a tow truck service that meets standards established:~~

~~[(i) by the department under Subsection (b);~~

~~[(ii) under Title 72, Chapter 9, Motor Carrier Safety Act.~~

~~[(b) The department shall make rules in accordance with Title 63, Chapter 46a, Utah~~

by the department.]

41-6-102.5 is enacted to read:

_____ Removal and impound of vehicles -- Reporting and notification

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Sections 41-1a-1101, 41-6-44.30, 41-6-102, 41-6-116.10, 73-18-12.7, 73-18-12.8, or 73-18-20.1 by

or highway authority as defined in Section 72-1-102, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner, to a state impound yard, or if none,

(2) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

(b) by the department under Subsection (9).

(3) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of

the removal shall be sent to the Motor Vehicle Division by:

- (i) the peace officer or agency by whom the peace officer is employed; and
- (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

- (i) the operator's name, if known;
- (ii) a description of the vehicle, vessel, or outboard motor;
- (iii) the vehicle identification number or vessel or outboard motor identification number;
- (iv) the license number or other identification number issued by a state agency;
- (v) the date, time, and place of impoundment;
- (vi) the reason for removal or impoundment;
- (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard

motor; and

(viii) the place where the vehicle, vessel, or outboard motor is stored.

(c) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (3), a tow truck motor carrier or impound yard may not:

- (i) collect any fee associated with the removal; and
- (ii) begin charging storage fees.

(4) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner prescribed by Section 41-1a-114.

(b) The notice shall:

(i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor; and

(iii) inform the registered owner of the vehicle, vessel, or outboard motor of the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released.

(c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner and any lien holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.

(d) The Motor Vehicle Division shall forward a copy of the notice to the place where the

(5) (a) The vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent:

State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel,

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) pays an administrative impound fee of \$200, if the vehicle was impounded under

(v) pays an administrative impound fee of \$25, if the vessel or outboard motor was impounded under Section 73-18-12.7; and

motor

(b) (i) Twenty-five dollars of the impound fees assessed under Subsection (5)(a)(iv) are dedicated credits to the Motor Vehicle Division;

Department of Public Safety Restricted Account created in Section 53-3-106; and

(iii) the remainder of the impound fees assessed under Subsection (5)(a)(iv) shall be

(c) The revenue from the administrative impound fee assessed under Subsection (5)(a)(v) are dedicated credits to the Motor Vehicle Division.

or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided in Section 41-1a-1104.

in Section 41-1a-1103.

(7) The registered owner who pays all fees and charges incurred in the impoundment of the
with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard
motor whose actions caused the removal or impoundment.

outboard motor.

(9) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, setting the performance standards for towing companies to be used by the department.

(10) (a) The Motor Vehicle Division may specify that a report required under Subsection (3) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database. The fees shall be reasonable and fair and shall reflect the cost of administering the database.

Section 5. Section **41-6-102.7** is enacted to read:

41-6-102.7. Removal of unattended vehicles prohibited without authorization --

Penalties.

(1) In cases not amounting to burglary or theft of a vehicle, a person may not remove an unattended vehicle without prior authorization of:

(a) a peace officer;

(b) a law enforcement agency;

(c) a highway authority, as defined under Section 72-1-102, having jurisdiction over the highway on which there is an unattended vehicle; or

(d) the owner or person in lawful possession or control of the real property.

(2) (a) An authorization from a person specified under Subsection (1)(a), (b), or (c) shall be in a form specified by the Motor Vehicle Division.

(b) The removal of the unattended vehicle shall comply with requirements of Section 41-6-102.5.

(3) The removal of the unattended vehicle authorized under Subsection (1)(d) shall comply with requirements of Section 72-9-603.

(4) A person who violates Subsections (1) or (3) is guilty of a class C misdemeanor.

Section 6. Section **41-6-116.10** is amended to read:

41-6-116.10. Abandoned vehicles -- Removal by peace officer -- Report -- Procedure if not reclaimed.

(1) As used in this section, "abandoned vehicle" means a vehicle that is left unattended:

(a) on a highway for a period in excess of 48 hours; or

(b) on any public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.

~~[(1)]~~ (2) A person may not abandon a vehicle upon any highway.

~~[(2)]~~ (3) A person may not abandon a vehicle upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

~~[(3)]~~(a) (4) A peace officer who has reasonable grounds to believe that a vehicle has been abandoned may remove the vehicle or cause it to be removed~~[, at the expense of the owner, to the nearest state impound yard or if none, to a garage or other place of safety]~~ in accordance with Section 41-6-102.5.

~~[(b)]~~ The peace officer shall immediately send a written report of the removal to the Motor Vehicle Division. The report shall include a description of the vehicle, the date, time and place of removal, the grounds for removal, and the name of the garage or place where the vehicle is stored.]

~~[(c)]~~ Upon receipt of a report, the Motor Vehicle Division shall attempt to notify the registered owner of the vehicle or any lien holder giving the grounds for removal and the name of the garage or place where the vehicle is stored.]

~~[(d)]~~ If the vehicle is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner or any lien holder of the removal and the name of the garage or place where the vehicle is stored.]

~~[(e)]~~ The Motor Vehicle Division shall forward a copy of the notice to the owner or person in charge of the garage or place where the vehicle is stored.]

~~[(4)]~~ For the purposes of this section, a vehicle is presumed to be abandoned if it is left unattended:]

~~[(a)]~~ on a highway for a period in excess of 24 hours; or]

~~[(b)]~~ on any public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.]

(5)

~~[(6)]~~ If the abandoned vehicle is not reclaimed by the registered owner or any lien holder within 30 days after actual notice or reasonable attempt to give notice to the registered owner or any lien holder, the provisions of Sections 41-1a-1009 and 41-1a-1102 shall apply, and the abandoned vehicle may be sold as provided in Section 41-1a-1301.]

Section 7. Section **53-1-106** is amended to read:

53-1-106. Department duties -- Powers.

(1)

(a)

(i) setting performance standards for towing companies to be used by the department, as

required by Section ~~[41-6-102]~~ 41-6-102.5; and

(ii)

(b)

Section 8. Section **53-3-106** is amended to read:

53-3-106. Disposition of revenues under this chapter -- Restricted account created -- Uses as provided by appropriation -- Nonlapsing.

(1)

(b)

(6) All monies received under ~~[Section 41-6-44.30]~~ Subsection 41-6-102.5(5)(b)(ii) shall be appropriated by the Legislature from this account to the department to implement the provisions of Section 53-1-117.

(7)

Section 9. Section **72-9-601** is amended to read:

72-9-601. Tow truck motor carrier requirements -- Authorized towing certificates.

(1) In addition to the requirements of this chapter, a tow truck motor carrier shall:

~~[(1)]~~ (a) ensure that all the motor carrier's tow truck drivers are properly:

~~[(a)]~~ (i) trained to operate tow truck equipment; ~~[and]~~

~~[(b)]~~ (ii) licensed, as required under Title 53, Chapter 3, Uniform Driver License Act; and

(iii) complying with the requirements under Sections 41-6-102.5 and 72-9-603; and

~~[(2)]~~ (b) obtain and display a current authorized towing certificate ~~[of inspection]~~ for the tow truck motor carrier, and each tow truck and driver, as required under Section 72-9-602.

(2) A tow truck motor carrier may only perform a towing service described in Section 41-6-102.5, 41-6-102.7, or 72-9-603, with a tow truck and driver that has a current authorized towing certificate under this part.

Section 10. Section **72-9-602** is amended to read:

72-9-602. Towing inspections, investigations, and certification -- Equipment requirements -- Consumer information.

(1) (a) The department shall ~~[conduct inspections of]~~ inspect, investigate, and certify tow truck motor carriers, tow trucks, and tow truck drivers to ensure compliance with this chapter and compliance with Sections 41-6-102.5 and 41-6-102.7.

(b) ~~[Each]~~ The inspection [of a tow truck], investigation, and certification shall be conducted prior to ~~[the]~~ any tow truck ~~[beginning]~~ operation and at least every two years thereafter.

(c) (i) The department shall issue [~~a~~] an authorized towing certificate [~~of inspection~~] for each tow truck motor carrier, tow truck, and driver that complies with this part.

(ii) The [~~inspection~~] certificate shall expire two years from the month of issuance.

(d) The department may charge a biennial fee established under Section 63-38-3.2 to cover the cost of the inspection, investigation, and certification required under this [~~section~~] part.

(2) The department shall make consumer protection information available to the public that may use a tow truck motor carrier.

Section 11. Section **72-9-603** is amended to read:

72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned vehicle title restrictions -- Rules for maximum rates and certification.

(1) [~~Unless a vehicle is impounded under Section 41-6-44.30, after performing a~~] Except for tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102, after performing a tow truck service that is being done without the vehicle, vessel, or outboard motor owner's knowledge, the [~~person operating the~~] tow truck operator or the tow truck motor carrier shall:

(a) [~~within one hour of~~] immediately upon arriving at the place of storage or impound of the vehicle, vessel, or outboard motor, contact the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency of the:

- (i) location of the vehicle, vessel, or outboard motor;
- (ii) date, time, and location from which the vehicle, vessel, or outboard motor was removed;
- (iii) reasons for the removal of the vehicle, vessel, or outboard motor;
- (iv) person who requested the removal of the vehicle, vessel, or outboard motor; and
- (v) [~~vehicle's~~] vehicle, vessel, or outboard motor's description, including its identification number and license number or other identification number issued by a state agency; and

(b) within [~~five~~] two business days of performing the tow truck service, send a certified letter to the last known address of the registered owner of the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or if the person has actual knowledge of the owner's address to the current address, notifying him of the:

- (i) location of the vehicle, vessel, or outboard motor;
- (ii) date, time, location from which the vehicle, vessel, or outboard motor was removed;
- (iii) reasons for the removal of the vehicle, vessel, or outboard motor;
- (iv) person who requested the removal of the vehicle, vessel, or outboard motor;
- (v) [~~vehicle's~~] a description, including its identification number and license number or other

H.B. 30

identification number issued by a state agency

(vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor

(2) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck motor carrier or impound yard may not:

(ii) begin charging storage fees.

~~[(3)]~~ (3) ~~registered~~ owner of a vehicle _____ lawfully removed is ___ responsible for paying:

___ the towing~~[-impound];~~ set in accordance with Subsection (7); and

(b) the administrative impound fee set in Section 41-6-102.5, if applicable

~~[(3)]~~ (4) ~~[-_____]~~ The under Subsection (3) are a possessory lien, vessel, or outboard motor until paid.

~~(4)]~~ ___ A person may not request a transfer of title to an abandoned vehicle until at least 30 days after notice has been sent under Subsection (1)(b).

disclose all its current fees and rates for towing and storage of a vehicle in accordance with rules established under Subsection (7).

~~(5)]~~ ___ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Transportation ~~[-]~~ shall:

___ set maximum rates that:

~~[-]~~ (i) _____ vehicles] _____

or outboard motor that are transported in response to:

~~(i)]~~ ___ a peace officer dispatch call;

~~[-]~~ (B)

~~[(iii)]~~ (C) any other call where the owner of the vehicle _____ has not consented to ___ removal ~~[of his vehicle~~

~~(b)]~~ (ii) impound yards may charge for the storage of ~~[-_____]~~ a vehicle, vessel, or _____ stored as a result of one of the conditions listed under Subsection ~~[(5)]~~ (7)(a)~~[-]~~;

related to incident safety, clean-up, and hazardous material handling; and

(c) specify the form and content of the posting and disclosure of fees and rates charged by

Section 12. Section **73-18-12.7**

73-18-12.7. Operating under the influence -- Seizure and impoundment of vessel.

(1) If a peace officer arrests or cites the operator of a vessel for violating Section 73-18-12.2 or a local ordinance similar to Section 73-18-12.2, which complies with Section 73-18-12.1, the peace officer shall seize and impound the vessel in accordance with Section 41-6-102.5, except as provided under Subsection (2). If necessary for transportation of the vessel for impoundment, the vessel's trailer may be used to transport the vessel.

(2)

(b) the vessel is legally operable.

~~[(3) (a) Any peace officer who impounds a vessel under this section shall remove, or cause the vessel to be removed, to the nearest accessible docking area, public or private garage, state impound lot, or other approved storage facility that meets the standards set by rule by the Motor Vehicle Division of the State Tax Commission, or if there is none, another reasonably safe place. The standards set by the Motor Vehicle Division shall be fair and reasonable and shall be unrestrictive as to the number of docking or other impoundment areas per geographical area.]~~

~~[(b) The peace officer or agency by whom the peace officer is employed shall within 24 hours after the seizure notify the Motor Vehicle Division of the seizure and impoundment. The notice shall set forth:]~~

~~[(i) the operator's name;]~~

~~[(ii) a description of the vessel, its identification number, if any, and its assigned number;]~~

~~[(iii) the date, time, and place of impoundment;]~~

~~[(iv) the reason for impoundment; and]~~

~~[(v) the location of the dock or other place where the vessel is stored.]~~

~~[(4) Upon receipt of the notice, the Motor Vehicle Division shall give notice to the registered owner of the vessel in the same manner as prescribed for vehicles by Section 41-1a-114. The notice shall:]~~

~~[(a) set forth:]~~

~~[(i) the date, time, and place of impoundment;]~~

~~[(ii) the name of the person operating the vessel at the time of seizure;]~~

~~[(iii) the reason for seizure and impoundment; and]~~

~~[(iv) the location where the vessel is stored;]~~

~~[(b) inform the registered owner that he is responsible for payment of transportation charges, impound fees, and storage fees charged against the vessel; and]~~

~~[(c) inform the registered owner of the vessel of the conditions prescribed in Subsection (5)]~~

_____]
[_____
agent:]

~~(i) makes a claim for release of the vessel at any state office designated by the Motor Vehicle Division;~~

~~[(ii) pays an impound fee of \$25;~~

~~[(iii) presents identification sufficient to prove ownership of the impounded vessel; and~~

~~[(iv) pays all transportation, impound, and storage fees.~~

~~[(b) The transportation and storage fees shall be paid to the docking area or other storage~~

_____]
revenue to the Motor Vehicle Division.]

~~(6) (a) Any impounded vessel not claimed by the registered owner or the owner's agent within 30 days shall be sold in accordance with the procedures specified in Section 41-1a-1103 for~~
_____]

[_____
41-1a-1104.]

~~(c) The date of impoundment is considered the date of seizure for purposes of computing the time period.~~

~~[(7) (3) (a) Transportation and storage fees shall be established by the Motor Vehicle owners and transportation and storage operators.~~

~~(b) Transportation, impound fees, or storage fees are a lien on the vessel.~~

~~(8) The registered owner of the vessel, upon the payment of all fees and charges incurred in the seizure and impoundment of the owner's vessel, has a cause of action for all the fees and~~

_____]
whose actions caused the impoundment.]

~~(9) Liability may not be imposed upon any peace officer, the state, or any of its political subdivisions on account of the enforcement of this section.~~

Section 13. Section **73-18-12.8**

73-18-12.8.

to tow impounded vessel.

A vehicle used to tow a vessel which is impounded under this chapter may be removed under

section, the vehicle may be removed and impounded under Section 41-6-102.5 if leaving it unattended is contrary to the safety of the public.

Section 14. Section **73-18-20.1** is amended to read:

73-18-20.1. Seizure of a vessel.

(1)

(3) Any peace officer seizing or taking possession of a vessel under this section shall ~~[immediately notify the Motor Vehicle Division of the State Tax Commission of the action and shall impound the vessel at a docking area, public or private garage, state impound lot, or other storage facility approved by the Motor Vehicle Division]~~ comply with the provisions of Section 41-6-102.5.

Section 15. Section **73-18-20.2** is amended to read:

73-18-20.2. Release and sale of a seized vessel.

~~[(1) A vessel seized under Section 73-18-20.1 shall remain impounded until:]~~

~~[(a) the vessel's registration has been properly completed and the appropriate fees have been paid; or]~~

~~[(b) the ownership of the vessel is established to the satisfaction of the division or its authorized agent.]~~

~~[(2)]~~ If the hull identification number or serial number for the engine or outboard motor of a vessel seized under Section 73-18-20.1 has been defaced, altered, or obliterated, the vessel may not be released until:

~~[(a)]~~ (1) the original manufacturer's hull identification number or engine or outboard motor serial number has been replaced; or

~~[(b)]~~ (2) a new number assigned by the division or its authorized agent has been provided and has been affixed to the vessel, engine, or outboard motor.

~~[(3) (a) Any seized vessel not claimed by the registered owner or the owner's agent within 30 days shall be sold and handled in accordance with the procedures specified in Sections 41-1a-1103 through 41-1a-1106 for the sale of impounded motor vehicles.]~~

~~[(b) The proceeds, if any, shall be disposed of in the same manner as under Section 41-1a-1104.]~~

~~[(c) Transportation, impound fees, or storage fees are a lien on the vessel.]~~

Section 16. **Effective date.**

This act takes effect on July 1, 2001.

VEHICLE SUSPENSION LIFT LAWS

2001 GENERAL SESSION
STATE OF UTAH

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James R. Gowans
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This act modifies the Motor Vehicle Code by amending motor vehicle frame height requirements and related provisions.

AMENDS:

41-6-148.29

41-6-148.31, as last amended by Chapter 1, Laws of Utah 1992
, as last amended by Chapter 10, Laws of Utah 1989

41-6-148.33

41-6-150.10, as last amended by Chapter 73, Laws of Utah 2000
, as enacted by Chapter 234, Laws of Utah 1993

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

41-6-148.29 is amended to read:

Vehicles subject to Sections 41-6-148.29 through 41-6-148.33 --

(1) Sections 41-6-148.29 through 41-6-148.33 apply to all motor vehicles with an original manufacturer's gross vehicle weight rating of [————] 15,000 highway within the state.

(2) As used in Sections 41-6-148.29 through 41-6-148.33:

(b) "Frame" means the main longitudinal structural members of the chassis of the vehicle or, for vehicles with unitized body construction, the lowest longitudinal structural member of the body of the vehicle.

(c) "Frame height" means the vertical distance between the ground and the lowest point on the frame. The distance is measured [~~from the ground to the lowest point on the frame where the front bumper is normally attached;~~] when the vehicle is unladen and on a level surface.

(d) "Gross vehicle weight rating (GVWR)" means the original manufacturer's gross vehicle weight rating, whether or not the vehicle is modified by use of parts not originally installed by the original manufacturer.

(e) "Manufacturer" means any person engaged in manufacturing or assembling new motor vehicles utilizing new parts or components, or a person defined as a manufacturer in current applicable Federal Motor Vehicle Safety Standards (FMVSS).

(f) "Mechanical alteration" or "mechanical lift" means modification or alteration of the axles, chassis, suspension, or body by any means, including tires and wheels, and excluding any load, which affects the frame height of the motor vehicle.

(g) "O.E.M." means original equipment manufacturer.

(h) "Original equipment" means an item of motor vehicle equipment, including tires, which were installed in or on a motor vehicle or available as an option for the particular vehicle from the original manufacturer at the time of its delivery to the first purchaser.

~~[(i) "Original manufacturer's height" means the highest distance, inclusive of the largest tires, and highest suspension available as standard or optional equipment for the particular vehicle from the original manufacturer.]~~

~~[(j) "Reconstructed motor vehicle" means any motor vehicle constructed or assembled principally with used parts or components.]~~

~~[(k) "Wheel base" means the shortest distance between the center of the front axle and the center of the rear axle.]~~

~~[(†) (i) "Wheel track" means the shortest distance between the center of the tire treads on the same axle. On vehicles having dissimilar axle widths, the axle with the widest distance is used for all calculations.~~

(3) The provisions of Sections 41-6-148.29 through 41-6-148.33 do not apply to the following vehicles:

- (a) implements of husbandry;
- (b) farm tractors;

- (d) road rollers; and
- (e) historical vehicles or horseless carriages that have been restored as near to original

Section 2. Section **41-6-148.31**

41-6-148.31.

(1) The following standards apply to vehicles under Sections 41-6-148.29 through 41-6-148.33:

- ~~(a) Fractions shall be excluded in all measurements and calculations.]~~
- ~~(b) Due to slight variances in production tolerances, violations are in excess of one inch beyond the limits set by this section.]~~
- ~~(c) (i) Maximum heights are measured from a level surface to the bottom of the frame where the front bumper is attached by the original manufacturer.]~~
 - ~~(ii) The distance of the original manufacturer's height is measured with the vehicle unladen and resting on a level surface or at any other location determined by the commissioner.]~~
 - ~~(iii) The appropriate method of measurement among the following shall be used:]~~
 - ~~(A) from the ground to the lowest edge of the center line of the operator's door;]~~
 - ~~(B) from the ground to the lowest point where that door would meet the body on vehicles without doors; or]~~
 - ~~(C) from the ground to the lowest point on the floor panel directly below the operator's position on vehicles designed without doors.]~~
 - ~~(iv) The commissioner shall periodically provide rules specifying approved maximum altered heights.~~
- ~~[(d) (a) All replacement parts and equipment used _____ shall be designed and capable of performing the function for which they are intended and shall be equal to or greater in strength and durability than the original parts provided by the original manufacturer.~~
- ~~[(e) The lowest portion of the body floor shall be not more than two inches above the top of the frame.]~~
- ~~[(f) The] (b) Except for original equipment, the use of spacers to increase wheel track width of~~

any vehicle is prohibited.

~~[(g)]~~ (c) The use of axle blocks to alter the suspension on the front axle of any vehicle is prohibited.

(d) The stacking of two or more axle blocks of any vehicle is prohibited.

(2) (a) In doubtful or unusual cases, or to meet specific industrial requirements, personnel of the Utah Highway Patrol shall inspect the vehicle to determine the road worthiness and safe condition of the vehicle and whether it complies with Sections 41-6-148.29 through 41-6-148.33.

(b) If the vehicle complies, the Utah Highway Patrol shall issue a permit of approval that shall be carried in the vehicle.

(3) (a) Upon notice to the party to whom the motor vehicle is registered, the Department of Public Safety shall suspend the registration of any motor vehicle equipped, altered, or modified in violation of Sections 41-6-148.29 through 41-6-148.33.

(b) The Motor Vehicle Division shall, under Subsection 41-1a-109(1)(e) or (2), refuse to register any motor vehicle it has reason to believe is equipped, altered, or modified in violation of Sections 41-6-148.29 through 41-6-148.33.

Section 3. Section **41-6-148.32** is amended to read:

41-6-148.32. Prohibitions.

(1) A person may not operate on any highway within the state a motor vehicle that is mechanically altered or changed ~~[and weighs]~~:

~~[(a) less than 6,000 pounds unladen, if the vertical distance between the highway surface and the vehicle chassis and suspension components, other than the wheels, is less than one inch above the vertical distance between the highway surface and the lowest portion of the rim of any wheel in contact with the highway;]~~

~~[(b) 6,000 pounds or more unladen, if the lowest part of the body or chassis is closer to the ground than it was when the vehicle was manufactured by the O.E.M., or the distance between the ground and the bottom of the vehicle frame where the front bumper is normally attached is less than that distance was at the time the vehicle was manufactured.]~~

~~[(2) (a) A motor vehicle may not be altered or modified]~~

(a) in any way that may cause the vehicle body or chassis to come in contact with the roadway, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation[-];

~~(b) [No part of the original braking, steering, or suspension system may be altered, modified,~~

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disconnected, or changed

·]

(c) so that any part of the vehicle other than tires, rims, and mudguards are less than three inches above the ground;

(d) to a frame height of more than 24 inches for a motor vehicle with a gross vehicle weight _____ of less than 4,500 pounds;

(e) to a frame height of more than 26 inches for a motor vehicle with a gross vehicle weight rating of at least 4,500 pounds and less than 7,500 pounds;

(f) to a frame height of more than 28 inches for a motor vehicle with a gross vehicle weight rating of at least 7,500 pounds;

(g) by stacking or attaching vehicle frames (one from on top of or beneath another frame); or

(h) so that the lowest portion of the body floor is raised more than three inches above the top of the frame.

~~[(3) The] (2) If the wheel track [may be] is increased [by use of tires and rims for a maximum total increase of six inches] beyond the O.E.M. specification, [provided] the top 50% of the tires [are] shall be covered by the original fenders, by rubber, or other flexible fender extenders under any loading condition.~~

~~[(4) Any motor vehicle having a wheel base greater than 100 inches may increase the O.E.M. height by use of a mechanical lift up to four inches. The largest tire size available from the O.E.M. as standard or optional equipment for the particular motor vehicle may also be increased up to four inches. The maximum combined mechanical and tire lift is eight inches above O.E.M. height.]~~

~~[(5) (a) The maximum combined lift for motor vehicles with a wheel base of 100 inches or less shall be calculated by multiplying the O.E.M. wheel base times the O.E.M. wheel track. The product divided by a safety factor of 2,200 equals the maximum mechanical lift allowed.]~~

~~[(b) For example: 92 inches w/b multiplied by 58 inches w/t equals 5,336 divided by 2,200 equals 2 inches maximum mechanical lift. The largest tire size available from the O.E.M. as standard or optional equipment for a particular motor vehicle may be increased, but not to exceed the maximum mechanical lift calculated under this subsection.]~~

~~[(6) (a) Reconstructed motor vehicles are limited to the maximum combined lift allowed for the particular chassis used in accordance with the applicable provisions of this subsection.]~~

~~[(b) For example: a 1985 Ford Bronco having a 105-inch wheel base is allowed a maximum combined lift of eight inches above the O.E.M. height. Accordingly, the lower edge of the door, door~~

~~edge line, or floor panel, as defined in this part, of any unladen body mounted on the chassis may not exceed 27 inches above the level surface upon which the vehicle rests.]~~

~~[(7) Any vehicle measured to determine compliance with this section shall be on a level surface.]~~

~~[(8) This section does not apply to motor vehicles weighing more than 26,000 pounds gross registered vehicle weight that are subject to state or federal motor carrier laws, rules, or regulations.]~~

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

Section 4. Section **41-6-148.33** is amended to read:

41-6-148.33. Bumpers.

(1) Every motor vehicle shall be equipped with a bumper on both front and rear of the vehicle,

except those that were not originally designed or manufactured with a bumper or bumpers.

(2) (a) On all motor vehicles under ~~[10,000]~~ 15,000 GVWR, bumpers shall be:

(i) at least 4.5 inches in vertical height~~[-];~~

(ii) centered on the vehicle's center line~~[-];~~ and

(iii) extend no less than the width of the respective wheel track distance.

(b) Bumpers shall be securely mounted, horizontal load bearing, and attached to the vehicle's frame to effectively transfer impact when engaged.

(3) When any motor vehicle is originally or later equipped with bumpers, the bumpers shall be maintained in operational condition and shall comply with this ~~[subsection]~~ section.

Section 5. Section **41-6-150.10** is amended to read:

41-6-150.10. Mudguards or flaps at rear wheels of trucks, trailers, truck tractors, or altered motor vehicles -- Exemptions.

(1) The definitions in Section 41-6-148.29 apply to this section.

(2) (a) Except as provided in Subsections (3) and (4), when operated on a highway, ~~[a motor vehicle]~~ the following vehicles shall be equipped with wheel covers, mudguards, flaps, or splash aprons behind the rearmost wheels to prevent, as far as practicable, the wheels from throwing dirt, water, or other materials on other vehicles:

(i) a vehicle that has been altered:

(A) from the original manufacturer's frame height; or

(B) in any other manner so that the motor vehicle's wheels may throw dirt, water, or other materials on other vehicles;

(ii) any truck with a gross vehicle weight rating of 10,500 pounds or more;

(iii) any truck tractor; and

(iv) any trailer or semitrailer with an unladen weight of 750 pounds or more [~~shall be equipped with wheel covers, mudguards, flaps, or splash aprons behind the rearmost wheels to prevent, as far as practicable, the wheels from throwing dirt, water, or other materials on other vehicles].~~

(b) The wheel covers, mudguards, flaps, or splash aprons shall:

(i) be at least as wide as the tires they are protecting;

(ii) be directly in line with the tires; and

(iii) have a ground clearance of not more than 50% of the diameter of a rear-axle wheel, under any conditions of loading of the motor vehicle.

(3) Wheel covers, mudguards, flaps, or splash aprons are not required if the motor vehicle, trailer, or semitrailer is designed and constructed so that the requirements of Subsection (1) are accomplished by means of fenders, body construction, or other means of enclosure.

(4) Wheel covers, mudguards, flaps, or splash aprons are not required on a vehicle operated or driven during fair weather on well-maintained, hard-surfaced roads if the motor vehicle:

(a) was made in America prior to 1935;

(b) is registered as a vintage vehicle; or

(c) is a replica vehicle as defined under Section 41-6-155.5.

(5) Except as provided in Subsection (4), rear wheels not covered at the top by fenders, bodies, or other parts of the vehicle shall be covered at the top by protective means extending rearward at least to the center line of the rearmost axle.

Section 6. Section **53-1-108** is amended to read:

53-1-108. Commissioner's powers and duties.

(1) In addition to the responsibilities contained in this title, the commissioner shall:

(a) administer and enforce this title and Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(b) appoint deputies, inspectors, examiners, clerical workers, and other employees as required to properly discharge the duties of the department;

(c) make rules:

(i) governing emergency use of signal lights on private vehicles; and

(ii) allowing privately owned vehicles to be designated for part-time emergency use, as provided in Section 41-6-1.5; [~~and~~]

[~~(iii) specifying approved maximum altered heights for vehicles, as required by Section 41-6-148.31;~~]

- (d) set standards for safety belt systems, as required by Section 41-6-182;
- (e) serve as the chairman of the Disaster Emergency Advisory Council, as required by Section 63-5-4; and
- (f) designate vehicles as "authorized emergency vehicles," as required by Section 41-6-1.
- (2) The commissioner may:
 - (a) subject to the approval of the governor, establish division headquarters at various places in the state;
 - (b) issue to a special agent a certificate of authority to act as a peace officer and revoke that authority for cause, as authorized in Section 56-1-21.5;
 - (c) create specialized units within the commissioner's office for conducting internal affairs and aircraft operations as necessary to protect the public safety;
 - (d) cooperate with any recognized agency in the education of the public in safety and crime prevention and participate in public or private partnerships, subject to Subsection (3);
 - (e) cooperate in applying for and distributing highway safety program funds; and
 - (f) receive and distribute federal funding to further the objectives of highway safety in compliance with the Federal Assistance Management Program Act.
- (3) (a) Money may not be expended under Subsection (2)(d) for public safety education unless it is specifically appropriated by the Legislature for that purpose.
- (b) Any recognized agency receiving state money for public safety shall file with the auditor of the state an itemized statement of all its receipts and expenditures.

OFF-HIGHWAY VEHICLE REGISTRATION AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent H. Goodfellow

This act modifies the Motor Vehicle Code by amending certain off-highway vehicle registration provisions. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

41-22-3, as last amended by Chapter 221, Laws of Utah 1993

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

Section 1. Section **41-22-3** is amended to read:

41-22-3. Registration of vehicles -- Application -- Issuance of stickers and card --

Proof of property tax payment -- Records.

(1) (a) Unless exempted under Section 41-22-9, [no] a person may not operate or transport and [no] an owner may not give another person permission to operate or transport any off-highway vehicle on any public land, trail, street, or highway in this state unless the off-highway vehicle has been registered under this chapter for the current year.

(b) Unless exempted under Section 41-22-9, [no] a dealer may not sell an off-highway vehicle which can be used or transported on any public land, trail, street, or highway in this state, unless it has been registered or is in the process of being registered under this chapter for the current year.

(2) The owner of any off-highway vehicle requiring registration under this chapter shall file an application for registration with the Motor Vehicle Division on forms approved by it.

(3) Each application for registration of an off-highway vehicle shall be accompanied by:

(a) evidence of ownership, a title, or a manufacturer's certificate of origin, and a bill of sale showing ownership, make, model, horsepower or displacement, and serial number;

(b) the past certificate of registration; or

(c) the fee for a duplicate.

(4) ~~[With every initial registration, the Motor Vehicle Division shall assign a number which shall remain with the vehicle and be valid until ownership of the vehicle is transferred. The number shall be displayed on the vehicle in a manner prescribed by the board. With every initial and subsequent]~~ Upon each annual registration, the Motor Vehicle Division shall issue numbered stickers to be affixed to the vehicles as prescribed by the board and a registration card, which shall be available for inspection on the vehicle at all times.

(5) The Motor Vehicle Division, before issuing a registration card and registration stickers, shall require from each applicant a certificate from the county assessor of the county in which the off-highway vehicle has situs for taxation. The certificate shall state one of the following:

(a) the property tax on the off-highway vehicle for the current year has been paid;

(b) in the county assessor's opinion, the tax is a lien on real property sufficient to secure the payment of the tax; or

(c) the off-highway vehicle is exempt by law from payment of property tax for the current year.

(6) (a) All records of the division made or kept pursuant to this section shall be classified by the Motor Vehicle Division in the same manner as motor vehicle records are classified under Section 41-1a-116.

(b) Division records are available for inspection in the same manner as motor vehicle records

pursuant to Section 41-1a-116.

Section 2. **Effective date.**

This act takes effect on July 1, 2001.

**MOTOR VEHICLE FRANCHISE ACT
AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Kevin S. Garn

This act modifies the New Automobile Franchise Act. The act provides for the appointment of alternate members to the Utah Motor Vehicle Franchise Advisory Board and changes the term of board members. The act provides for emergency orders in cases where irreparable injury would otherwise result. The act makes other technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

13-14-103, as last amended by Chapter 162, Laws of Utah 1997

13-14-106, as last amended by Chapter 162, Laws of Utah 1997

13-14-107, as last amended by Chapter 162, Laws of Utah 1997

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

Section 1. Section **13-14-103** is amended to read:

13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --

Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.

(1) There is created within the department the Utah Motor Vehicle Franchise Advisory Board that consists of:

(a) the executive director or the executive director's designee;

(b) six members appointed by the executive director, with the concurrence of the governor as follows:

(i) one motorcycle or recreational motor vehicle franchisee;

(ii) two new motor vehicle franchisees from among the three congressional districts of the state as the districts were constituted on January 1, 1996, no more than one of which shall be located in the same congressional district; ~~[and]~~

(iii) three members representing motor vehicle franchisors registered by the department pursuant to Section 13-14-105, or three members of the general public, none of whom shall be related to any franchisee, or any combination of these representatives under this ~~[subsection.]~~
Subsection (1)(b)(iii); and

~~[(2) (a) In accordance with Subsection (1), the executive director shall appoint three of the initial members of the advisory board to one-year terms and three of the initial members of the advisory board to two-year terms. No more than two of the members appointed to two-year terms shall be franchisees.]~~

~~[(b) At the expiration of the initial terms under Subsection (2)(a), the executive director shall appoint a member to a term of two years.]~~

(iv) three alternate members, with one alternate from each of the designations set forth in Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), who shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

(2) (a) Members of the advisory board shall be appointed for a term of four years.

(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to two

additional years in order to insure that approximately half of the members are appointed every two years.

(c) In the event of a vacancy on the advisory board, the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.

(d) A member may not be appointed to more than two consecutive terms.

(3) (a) The executive director or the executive director's designee shall be the chair of the advisory board.

(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.

(4) Four or more members of the advisory board constitute a quorum for the transaction of business. The action of a majority of the members of the advisory board is considered the action of the advisory board.

(5) (a) A member of the advisory board may not participate as a board member in a proceeding or hearing:

(i) involving the member's licensed business or employer; or

(ii) when a member, a member's business or family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.

(b) If a member of the advisory board is disqualified under Subsection (5)(a), the executive director shall select ~~[a replacement]~~ the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (1)(b)(iv).

(6) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.

(7) The members of the advisory board shall serve without compensation.

(8) The department shall provide necessary staff support to the advisory board.

Section 2. Section **13-14-106** is amended to read:

13-14-106. Administrative enforcement.

(1) ~~[After]~~ Except as provided in Subsection (5), after a hearing and after receipt of the advisory board's recommendation, if the executive director finds that a person has violated this chapter or any rule made under this chapter, the executive director may:

(a) issue a cease and desist order; and

(b) assess an administrative fine.

(2) ~~[The]~~ Except as provided in Subsection (5), the executive director shall comply with Title 63, Chapter 46b, Administrative Procedures Act, and shall consult with the advisory board prior to any order or assessment of fine.

(3) (a) In determining the amount and appropriateness of an administrative fine, the executive director shall consider:

- (i) the gravity of the violation;
- (ii) any history of previous violations; and
- (iii) any attempt made by the person to retaliate against another person for seeking relief under this chapter or other federal or state law relating to the motor vehicle industry.

(b) In addition to any other action permitted under Subsection (1), the department may file an action with a court seeking to enforce the executive director's order and pursue the executive director's assessment of a fine in an amount not to exceed \$5,000 for each day a person violates an order of the executive director.

(4) Any person aggrieved by an adverse determination by the executive director may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Administrative Procedures Act or seek judicial review of the order.

(5) (a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63-46b-20(1), the executive director may issue an order on an emergency basis if the executive director determines that irreparable damage is likely to occur if immediate action is not taken.

(b) In issuing an emergency order under Subsection (5)(a) the executive director shall comply with the requirements of Subsections 63-46b-20(2) and (3).

Section 3. Section **13-14-107** is amended to read:

13-14-107. Administrative hearings.

(1) (a) A person may commence an adjudicative proceeding [~~before the executive director and the advisory board,~~] in accordance with this chapter and with Title 63, Chapter 46b, Administrative Procedures Act to:

- (i) remedy a violation of this chapter; or
- (ii) obtain approval of an act regulated by this chapter.

(b) A person shall commence an adjudicative proceeding [~~before the executive director and the advisory board~~] by filing a request for agency action in accordance with Section 63-46b-3.

(2) (a) The advisory board shall conduct all adjudicative proceedings in accordance with Title 63, Chapter 46b, Administrative Procedures Act, with a quorum of the advisory board members in attendance.

(b) An order or decision issued by the executive director shall comply with Section 63-46b-10.

(c) Any hearing under this chapter shall be conducted as an informal proceeding unless otherwise designated as a formal proceeding pursuant to the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

(3) The advisory board shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney's fees subject to final approval by a court.

ORIGINAL ISSUE LICENSE PLATE

AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Rebecca D. Lockhart

This act modifies the Motor Vehicle Act by amending the vehicle model year for vehicles allowed to use original issue license plates.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

41-1a-416, as last amended by Chapter 184, Laws of Utah 1994

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

Section 1. Section **41-1a-416** is amended to read:

41-1a-416. Original issue license plates -- Alternative stickers -- Rulemaking.

(1) The owner of a motor vehicle that is a model year [~~1968~~] 1973 or older may apply to the division for permission to display an original issue license plate of a format and type issued by the state in the same year as the model year of the vehicle.

(2) The owner of a motor vehicle who desires to display original issue license plates instead of license plates issued under Section 41-1a-401 shall:

(a) complete an application on a form provided by the division;

(b) supply and submit the original license plates that the owner desires to display to the division for approval; and

(c) pay the fees prescribed in Sections 41-1a-1206 and 41-1a-1211.

(3) The division, prior to approval of an application under this section, shall determine that the original issue license plates:

(a) are of a format and type issued by the state for use on a motor vehicle in this state;

(b) have numbers and characters that are unique and do not conflict with existing license plate series in this state;

(c) are legible, durable, and otherwise in a condition that serves the purposes of this chapter, except that original issue license plates are exempt from the provision of Section 41-1a-401 regarding reflectorization and Section 41-1a-403 regarding legibility from 100 feet; and

(d) are from the same year of issue as the model year of the motor vehicle on which they are to be displayed.

(4) An owner of a motor vehicle displaying original issue license plates approved under this section is not exempt from any other requirement of this chapter except as specified under this section.

(5) (a) An owner of a motor vehicle currently registered in this state whose original issue license plates are not approved by the division because of the requirement in Subsection (3)(b), may apply to the division for a sticker to allow the temporary display of the original issue license plates if:

(i) the plates otherwise comply with this section;

(ii) the plates are only displayed when the motor vehicle is used for participating in motor vehicle club activities, exhibitions, tours, parades, and similar activities and are not used for general daily transportation;

(iii) the license plates and registration issued under this chapter for normal use of the motor vehicle on the highways of this state are kept in the motor vehicle and shown to a peace officer on request; and

(iv) the sticker issued by the division under this subsection is properly affixed to the face of the original issue license plate.

(b) The sticker issued under this section shall be the size and form customarily furnished by the division.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules for the implementation of this section.

THEFT OF RENTAL MOTOR VEHICLE

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

This act modifies the Criminal Code by establishing the specific offense of theft of a rental vehicle. The act states that failure to return the vehicle within 72 hours after the date the vehicle is due to be returned is the criminal offense of theft.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

76-6-410.5, Utah Code Annotated 1953

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

Section 1. Section **76-6-410.5** is enacted to read:

76-6-410.5. Theft of a rental vehicle.

(1) As used in this section:

(a) "Motor vehicle" means a self-propelled vehicle that is intended primarily for use and operation on the highways.

(b) "Rental agreement" means any written agreement stating the terms and conditions governing the use of a motor vehicle provided by a rental company.

(c) "Rental company" means any person or organization in the business of providing motor vehicles to the public.

(d) "Renter" means any person or organization obtaining the use of a motor vehicle from a rental company under the terms of a rental agreement.

(2) A renter is guilty of theft of a rental vehicle if, without notice to and permission of the rental company, the renter knowingly fails without good cause to return the vehicle within 72 hours after the time established for the return in the rental agreement.

(3) If the motor vehicle is not rented on a periodic tenancy basis, the rental company shall include the following information, legibly written, as part of the terms of the rental agreement:

(a) the date and time the motor vehicle is required to be returned; and

(b) the maximum penalties under state law if the motor vehicle is not returned within 72 hours from the date and time stated in compliance with Subsection (3)(a).

LICENSURE OF MOTOR VEHICLES

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

This act modifies the Motor Vehicle Code by requiring applicants for new vehicle registration or a temporary permit to show a valid driver license.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

41-1a-211, as last amended by Chapter 125, Laws of Utah 1998

41-3-303, as last amended by Chapter 234, Laws of Utah 1993

ENACTS:

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

41-1a-210.5 is enacted to read:

_____ **Driver license required on new registrations.**

application to show proof of a valid driver license.

Section 2. Section _____ is amended to read:

41-1a-211. Temporary permits -- Other laws applied.

(1) (a) The division may grant a temporary permit to operate a vehicle for which:

will be made;

- (ii) evidence of ownership is provided; [—]
 - (iii) the proper fees have been paid[-]; and
-

(b) The temporary permit allows the vehicle to be operated pending complete registration by displaying:

- (ii) other evidence of the application under rules made by the commission.
- (2) If a vehicle is operated on a temporary permit issued under this section or Section

use and operation of vehicles on the highways.

Section 3. Section _____ is amended to read:

41-3-303. Temporary permits -- Inspections required before issuance.

(1) A dealer licensed in accordance with this chapter may not issue a temporary permit

(a) (i) the motor vehicle for which the temporary permit is issued has received and passed the safety inspection required by Section 53-8-205 within the previous six months;

dealer; and

- (iii) a copy of the safety inspection certificate is given to the customer; [—]
- (b) the motor vehicle passed the emission inspection test required by Section _____

(c) the person making the application for the temporary permit has shown evidence of a valid driver license.

(2) Notwithstanding Subsection (1)(a), a dealer may issue a temporary permit without a safety inspection certificate if the motor vehicle complies with the safety inspection as provided in Section 41-1a-205.

(3) Notwithstanding Subsection (1)(b), a dealer may issue a temporary permit without proof of an emission inspection if:

(a) the motor vehicle is exempt from emission inspection as provided in Section 41-6-163.6;

(b) the purchaser is a resident of a county that does not require emission inspections; or

(c) the motor vehicle is otherwise exempt from emission inspections.

(4) Notwithstanding Subsection (1), a dealer may sell a motor vehicle as is without having it safety or emission inspected provided that no temporary permit is issued.

Legislative Review Note

as of 1-9-01 2:58 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

MOTOR VEHICLE INSURANCE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Insurance Code by limiting underinsured motorist insurance coverage subrogation and clarifying the conditions for making an uninsured motorist claim.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-22-305, as last amended by Chapter 188, Laws of Utah 2000

31A-22-307, as last amended by Chapter 71, Laws of Utah 1994

31A-22-309, as last amended by Chapter 222, Laws of Utah 2000

Section 1. Section **31A-22-305**

31A-22-305.

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

(a) the named insured;

are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

self-insurer; and

(d) any person who is entitled to recover damages against the owner or operator of the

Subsection

(1)(a), (b), or (c).

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

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

operator;

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

(d) (i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle is

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

for

covered persons who are legally entitled to recover damages from owners or operators of uninsured

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

- (i) waives the higher coverage;
- (ii) reasonably explains the purpose of uninsured motorist coverage; and
- (iii) discloses the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

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

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

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

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

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

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

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing

requests uninsured motorist coverage from that liability insurer.

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

(c) Uninsured motorist coverage:

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

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

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

made whole.

(d) As used in this Subsection (4):

(ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b)

covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of insured or an insured family member.

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

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

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

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

(b) Each of the following persons may also recover uninsured motorist benefits under any other

policy in which they are described as a "covered person" as defined in Subsection (1):

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

(ii) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

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

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

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

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

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

(9) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides coverage

for covered persons who are legally entitled to recover damages from owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease, or death.

coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the

vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

- (ii) reasonably explains the purpose of underinsured motorist coverage; and
- (iii) discloses the additional premiums required to purchase underinsured motorist coverage

maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

one person in any one accident and at least \$20,000 for two or more persons in any one accident.

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

secondary to the liability coverage of an owner or operator of an underinsured motor vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off against the liability with, or stacked upon the liability coverage of the owner or operator of the underinsured motor vehicle to determine the limit of coverage available to the injured person.

the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

explanation of the purpose of underinsured motorist coverage and when it would be applicable.

- (iii) This rejection continues for that issuer of the liability coverage until the insured in writing

(g) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies

existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

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

(10) (a) Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in this Subsection (10), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.

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

(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under Subsection (10)[(e)] (d)(i)(B).

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

(c) Underinsured motorist coverage:

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

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

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

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

(d) (i) Each of the following persons may also recover underinsured motorist coverage benefits

(1):

(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(iii) A covered person as defined under Subsection (10)~~(b)~~ (d)(i)(B) is entitled to the highest named insured or an insured family member.

(iv) This coverage shall be in addition to the coverage on the vehicle the covered person is

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

(e) A covered injured person is not barred against making subsequent elections if recovery is

(11) A claim may not be brought by a covered person against a motor vehicle underinsured motorist policy more than three years after the date of the last liability policy payment.

that _____

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

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

be _____

Section 2. Section **31A-22-307**

31A-22-307.

(1) Personal injury protection coverages and benefits include:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental,

total of \$3,000 per person;

(b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of earning

capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and

(ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;

(c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of \$3,000.

(2) (a) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309 (1)~~(e)~~(a)(v), the commissioner shall conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and determine the 75th percentile charge for each type of service and accommodation. The study shall be updated every other year. In conducting the study, the department may consult or contract with appropriate public and private medical and health agencies or other technical experts. The costs and expenses incurred in conducting, maintaining, and administering the relative value study shall be funded by the tax created under Section 59-9-105. Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and the 75th percentile charge assigned to each type of service and accommodation.

(b) The reasonable value of any service or accommodation is determined by applying the unit value and the 75th percentile charge assigned to the service or accommodation under the relative value study. If a service or accommodation is not assigned a unit value or the 75th percentile charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state.

(c) This Subsection (2) does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this subsection.

(d) Every insurer shall report to the Commissioner of Insurance any patterns of overcharging, excessive treatment, or other improper actions by a health provider within 30 days after such insurer has knowledge of such pattern.

designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309 (1)[—](a)(v) accordance with a recognized religious method of healing.

loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

received any earned income from regular employment; and

(b) for at least 180 days from the date of the writing and during the period of insurance,

the insured nor the insured's spouse will receive earned income from regular employment.

(5) This section does not prohibit the issuance of policies of insurance providing coverages

those minimum coverages from other coverages in the same policy.

(6) Deductibles are not permitted with respect to the insurance coverages required under this

Section 3. Section **31A-22-309**

31A-22-309.

(1) (a)

includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person

~~(a)~~ (i) death;

~~(b)~~ ___ dismemberment;

~~(c)~~ (iii)

~~(d)~~ (iv) permanent disfigurement; or

~~(e)~~ ___ medical expenses to a person in excess of \$3,000.

(b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the insured while occupying another motor vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to his injury:

(A) by intentionally causing injury to himself; or

(B) while committing a felony;

(iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;

(v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or

(vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.

(b) The provisions of this subsection do not limit the exclusions which may be contained in other types of coverage.

(3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

(a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan; and

(b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because that person is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a monthly basis as expenses are incurred.

(b) Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is

overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30

(c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1-1/2% per month after the due date.

plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been

insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

mandatory, binding arbitration between the insurers.

Bankruptcy Reform Bill of 2001

- Passed in the House on March 1, 2001 by a vote of 306-108.
- Passed in the Senate on March 19, 2001 by a vote of 83-15.

SUMMARY AS OF:

3/1/2001--Reported to Senate, without amendment. (There is 1 other summary)

Bankruptcy Reform Act of 2001- Title I: Needs-Based Bankruptcy - Amends Federal bankruptcy law to revamp guidelines governing dismissal or conversion of a Chapter 7 liquidation petition (complete relief in bankruptcy) to one under Chapter 11 (Reorganization) or Chapter 13 (Adjustment of Debts of an Individual with Regular Income). Allows a bankruptcy panel trustee and any party in interest to move for such dismissal or conversion (current law prohibits a party in interest from such motions). Lowers the "substantial abuse" standard for dismissal or conversion to one of simple abuse. Replaces the presumption in favor of granting the relief sought by the debtor with a presumption that abuse exists if the debtor's current monthly income exceeds an amount determined according to specified formulae.

(Sec. 102) Includes within the calculation of debtor's monthly expenses: (1) those expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as identified under the Family Violence Prevention and Services Act or other applicable Federal law; and (2) continuation of actual expenses paid by the debtor for the care and support of an elderly, chronically ill, or disabled household or non-dependent immediate family member.

Provides that the presumption of abuse may only be rebutted with detailed documentation of special circumstances requiring additional expenses or adjustment of currently monthly total income for which there is no reasonable alternative.

Requires the debtor's counsel to reimburse the bankruptcy trustee for legal fees in prosecuting a dismissal or conversion motion if the court finds that counsel's filing under Chapter 7 was in violation of certain bankruptcy rules.

Requires the court, upon motion by the victim of a crime of violence or a drug trafficking crime (or at the request of a party in interest), to dismiss a voluntary case filed by an individual debtor convicted of that crime (unless the debtor establishes that filing of the case is necessary to satisfy a claim for a domestic support obligation).

Redefines "disposable income" of a chapter 13 debtor to exclude such debtor's domestic support obligation that first becomes payable after the date the petition is filed.

(Sec. 103) Expresses the sense of Congress that the Secretary of the Treasury has the authority to alter Internal Revenue Service (IRS) standards established to set guidelines for repayment plans as needed to accommodate their use under the Bankruptcy Code.

Instructs the Director of the Executive Office for U.S. Trustees to report to certain congressional committees regarding the utilization of Internal Revenue standards for determining specified monthly expenses of a debtor and the impact of such standards upon debtors and the bankruptcy courts.

(Sec. 104) Revises procedural guidelines to mandate a written notice to the individual consumer debtor before commencement of a case stating: (1) the types of services available from credit counseling agencies; (2) the criminal penalties for fraudulent concealment of assets; and (3) that all creditor-supplied information is subject to examination by the Attorney General.

(Sec. 105) Instructs the Director of the Executive Office for U.S. Trustees to: (1) develop a financial management training curriculum and materials to educate individual debtors on how to better manage their finances; and (2) test, evaluate, and report to Congress on the curriculum's effectiveness.

(Sec. 106) Precludes an individual debtor from filing under Federal bankruptcy law unless the individual has received a briefing from an approved nonprofit budget and credit counseling service prior to filing a bankruptcy petition, unless the U.S. trustee or bankruptcy administrator determines that the service for the district in which the debtor lives is not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling because of such requirement.

Conditions a Chapter 7 or Chapter 13 discharge in bankruptcy upon the debtor's completion of an approved instructional course concerning personal financial management.

Requires the clerk of each district to maintain a public list of credit counseling agencies and instructional courses concerning personal financial management. Prescribes criteria for approval of such agencies and courses.

Prohibits such counseling service from informing a credit reporting agency whether an individual debtor has received or sought personal financial management instruction. Establishes civil penalties for noncompliance.

Title II: Enhanced Consumer Protection - Subtitle A: Penalties for Abusive Creditor Practices - Cites circumstances under which the court may reduce by up to 20 percent a claim based in whole upon unsecured consumer debts if the debtor can show by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency acting on the debtor's behalf.

(Sec. 202) Makes a creditor's willful failure to credit payments received from a debtor (with a specified exception), if such failure caused material injury to the debtor, a violation of a discharge operating as an injunction.

(Sec. 203) Modifies debt reaffirmation guidelines governing wholly unsecured consumer debts to mandate specified detailed disclosures and explanations to the debtor for dischargeable debt agreements. Exempts a credit union creditor from such detailed disclosures and explanations.

Amends Federal criminal law to instruct the Attorney General to designate U.S. attorneys and agents of the Federal Bureau of Investigation to implement enforcement activities in addressing: (1) abusive reaffirmations of debt; and (2) materially fraudulent statements in bankruptcy schedules that are intentionally false or misleading. Directs the bankruptcy court to establish procedures for referring those cases to such U.S. attorneys and agents of the Federal Bureau of Investigation.

Subtitle B: Priority Child Support - Revises priority payment guidelines to place within the first priority claim category certain unsecured claims for domestic support obligations, on the condition that funds received by a governmental unit be applied in a prescribed order.

(Sec. 213) Conditions court confirmation of a debt repayment plan under Chapters 11, 12 (Debts of a Family Farmer), and 13 (and the subsequent discharge of debts) upon certification of debtor's full payment of all adjudicated domestic support obligations that are due after the petition filing date.

(Sec. 214) Excepts from an automatic stay specified choses-in-action pertaining to domestic support obligations proceedings including: (1) child custody or visitation; (2) dissolution of marriage; (3) domestic violence; (4) withholding of income that is property of the bankrupt estate for payment of domestic support obligations; (5) suspension of drivers' licenses and professional licenses; (6) reporting of overdue support owed by a parent to certain consumer reporting agencies; (7) interception of specified tax refunds; (8) establishment of paternity; (9) establishment or modification of an order for domestic support obligations; and (10) enforcement of medical obligations under title IV, part D (Child Support and Establishment of Paternity) of the Social Security Act.

(Sec. 215) Revamps guidelines governing the nondischargeability of certain debts for alimony, maintenance, and support to repeal the exceptions granted the debtor under specified conditions.

(Sec. 216) Modifies guidelines governing property exempt from the bankruptcy estate to declare such property liable for a debt arising from domestic support obligations.

(Sec. 217) Prohibits the bankruptcy trustee from avoiding a transfer that is a bona fide payment of a debt for a domestic support obligation.

(Sec. 218) Redefines "disposable income" received by certain debtors, with respect to confirmation of a plan under Chapter 12 or 13, to include income not reasonably expected to be expended for a domestic support obligation that first becomes payable after the date on which a petition for debt relief is filed.

(Sec. 219) Sets forth the duties of the bankruptcy trustee under chapters 7, 11, 12, and 13 regarding a claim against an individual debtor for the collection of child support, including notifying the claim holder and the appropriate State child support agency of the debtor's last known address.

(Sec. 220) Makes dischargeable any debts for certain qualified educational loans which, if not discharged, would impose an undue hardship upon either the debtor or the debtor's dependent.

Subtitle C: Other Consumer Protections - Modifies guidelines governing nonattorney bankruptcy petition preparers to mandate that as a prerequisite to any collection of fees for services: (1) such preparers officially disclose to debtors that they cannot practice law or give legal advice; and (2) such disclosure be signed by the debtor and filed with the requisite court documents. Prescribes enforcement and penalty guidelines for preparer noncompliance.

(Sec. 222) Expresses the sense of the Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

(Sec. 223) Places in the tenth order of prioritized claims against the bankrupt estate any death or personal injury claims resulting from the unlawful operation of a motor vehicle or vessel because the debtor was drug or alcohol-impaired.

(Sec. 224) Permits an individual debtor to exempt from the property of the bankrupt estate certain tax-exempt retirement funds that have not been obligated in connection with any extension of credit.

Exempts from either an automatic stay or a discharge in bankruptcy specified income withheld from the debtor pursuant to pension or profit sharing plans sponsored by such debtor's employer to pay certain loans from such plans.

(Sec. 225) Sets forth criteria for excluding certain education individual retirement accounts from the property of the bankruptcy estate if the designated beneficiary is the debtor's child or grandchild.

(Sec. 227) Sets forth restrictions on and requirements for debt relief agency practices. Provides for civil penalties for intentional violations. Requires a debt relief agency providing bankruptcy assistance to provide prescribed disclosures to an assisted person.

(Sec. 230) Instructs the Comptroller General to study and report to Congress on the feasibility, effectiveness, and cost of requiring trustees or the bankruptcy courts to provide the Office of Child Support Enforcement with the names and address of an individual debtor promptly after such debtor commences a case.

(Sec. 231) Prohibits a bankruptcy trustee from selling or leasing to unaffiliated third parties, contrary to the debtor's privacy policy, personally identifiable information possessed by the debtor concerning an individual, unless specified conditions have been met.

(Sec. 232) Mandates court appointment of a consumer privacy ombudsman if the trustee intends to sell or lease such information in a manner which requires a court hearing on such transfer.

Title III: Discouraging Bankruptcy Abuse - Modifies exceptions to a discharge in bankruptcy to prohibit discharge of a filing fee imposed by any court upon a prisoner.

(Sec. 302) Terminates the automatic stay 30 days after filing of a petition if a chapter 7, 11, or 13 petition was pending and dismissed the previous year, unless the subsequent filing is in good faith. Delineates conditions under which a history of previous petitions in bankruptcy give rise to a rebuttable presumption that the case is not filed in good faith.

(Sec. 303) Directs the court to grant two-year relief from the automatic stay upon request of a party in interest with respect to certain real property actions if the court finds that filing the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors.

(Sec. 304) Modifies debtor's duties to mandate specified affirmative actions to be taken by a chapter 7 debtor, including reaffirmation of the debt, or redemption of the property within 45 days, in order to retain possession of personal property. Allows a creditor to take action with respect to such property under nonbankruptcy law if the debtor fails to act within 45 days, unless the court determines upon trustee motion that such property is of consequential value or benefit to the estate.

(Sec. 305) Declares that the automatic stay is terminated regarding property of the debtor's estate securing a claim or subject to an unexpired lease, if the debtor fails to complete an intended surrender of consumer debt collateral, or an intended property redemption or debt reaffirmation in order to

retain such collateral, within a revised, accelerated time frame (unless the court determines upon trustee motion that such property is of consequential value or benefit to the estate).

(Sec. 306) Requires the bankruptcy court to confirm a Chapter 13 plan if it provides that the holder of a secured allowed claim shall retain the attendant lien until payment or discharge of all debts.

Provides that if a Chapter 13 proceeding is dismissed or converted without completion of the plan, the holder shall retain such lien to the extent recognized by applicable nonbankruptcy law.

Provides that statutory guidelines to determine the secured status of a creditor's claim do not apply if: (1) the creditor has a purchase money security interest securing the debt; (2) the underlying debt was incurred within the five-year period preceding the filing of the bankruptcy petition; and (3) the collateral for that debt consists of a motor vehicle acquired for the debtor's personal use (or if the collateral consists of any other thing of value if the debt was incurred during the one-year period preceding such filing).

(Sec. 307) Increases from 180 to 730 days the length of a debtor's location of domicile for purposes of determining which State law governs the debtor's selection of property exempt from the bankrupt estate. Moderates such time frame if the debtor's domicile has not been located at a single State for such 730-day period.

(Sec. 308) Reduces the value of the homestead exemption and debtor's burial plot to the extent it is attributable to any portion of any property: (1) disposed of by the debtor within the seven-year period ending on the bankruptcy petition filing date with the intent to obstruct or defraud a creditor; and (2) which the debtor could not exempt.

(Sec. 309) Revamps prescriptions governing the effects of conversion from chapter 13 to another chapter. Declares that: (1) valuations of property and of allowed secured claims in a chapter 13 case shall not apply in a case converted to chapter 7; and (2) with respect to cases converted from Chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full claim amount, as determined under applicable nonbankruptcy law, has been paid in full as of the conversion date. States that a prebankruptcy default shall have the effect given under applicable nonbankruptcy law unless it has been fully cured pursuant to the plan at the time of conversion.

Provides for a Chapter 7 debtor's assumption of unexpired leases of personal property. Declares that in a Chapter 11 case in which the debtor is an individual, and in a Chapter 13 case, if the lease is not

assumed in the plan, it is rejected (thus no longer subject to an automatic stay) as of the conclusion of the hearing on confirmation.

Delineates a cash payment plan for chapter 13 debtors for payments to any lessor of personal property and to any creditor holding a claim secured by personal property in order to ensure adequate protection to the claim holder during the payment period. Mandates that a debtor-in-possession provide reasonable evidence of any requisite insurance coverage with respect to the use or ownership of such property.

(Sec. 310) Reduces from the threshold amounts of luxury goods and consumer credit any consumer debts owed to a single creditor presumed nondischargeable in bankruptcy, if acquired within 90 days and 70 days, respectively, (currently 60 days) before an order for relief is issued.

(Sec. 311) Precludes an automatic stay of any eviction, unlawful detainer action, or similar proceeding by a lessor in specified circumstances against a debtor involving residential real property: (1) on which the debtor resides as a tenant under a rental agreement; (2) with respect to which the debtor has commenced another bankruptcy case within the year preceding the filing of the petition for relief; or (3) with respect to which eviction actions are based upon endangerment to property or person or the use of illegal drugs. Specifies circumstances in which such an exception to an automatic stay shall not become effective.

(Sec. 312) Extends the period between Chapter 7 discharges to eight years, and between Chapter 13 discharges to five years.

(Sec . 313) Requires the Director of the Executive Office for U.S. Trustees to report to specified congressional committees about utilization of the definition of household goods under this Act with respect to: (1) the avoidance of nonpossessory, nonpurchase money security interests in household goods; and (2) the impact that such definition has had on debtors and on the bankruptcy courts.

(Sec. 314) Lists among debts that are not dischargeable in bankruptcy a debt incurred to pay a tax to a non-Federal governmental unit.

Revamps Chapter 13 debt discharge guidelines. Prohibits discharge from a debt for restitution or damages awarded in a civil action against the debtor for willful or malicious injury that caused personal injury or death of an individual.

(Sec. 315) Prescribes notice procedures for Chapter 7 and Chapter 13 creditors.

Expands debtor's duties to require filing with the bankruptcy court of: (1) all tax returns; (2) evidence of employer payments received; (3) monthly net income projections; and (4) anticipated income or expenditure increases. Permits a Chapter 7 or chapter 13 creditor to request the debtor's petition, schedules, and statement of affairs, including the debt adjustment plan filed by the debtor.

Requires dismissal of a Chapter 7 or 13 case upon debtor's failure to provide to the bankruptcy trustee not later than seven days before the date first set for the first meeting of creditors a tax return for the latest taxable period prior to filing.

Mandates that, at the time of filing with the taxing authority, a Chapter 7 or 13 debtor file with the bankruptcy court specified tax documentation pertaining to the period from case commencement until case termination.

Requires a Chapter 13 debtor to file with the court a statement of income and expenditures in the preceding tax year, and monthly net income, showing how calculated.

Makes debtor's mandatory documentation available for inspection and copying to certain bankruptcy officers and any party in interest. Requires debtors to furnish driver's license, passport, or other photograph-containing documentation establishing debtor identification.

(Sec. 316) Provides for automatic dismissal if a Chapter 7 or 13 debtor fails to furnish all mandatory information, or fails to timely file the requisite schedules. Requires the court to order dismissal within five days of a request by a party in interest for debtor's failure to timely submit requisite documentation.

(Sec. 317) Requires a Chapter 13 confirmation hearing to be held not later than 45 days after the first meeting of creditors.

(Sec. 318) Sets forth a statutory formula to determine whether a Chapter 13 debt readjustment payment plan shall be of either three-year or five-year duration.

(Sec. 319) Expresses the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure should include a requirement that all debtors' documents be submitted to the court only after debtors have made reasonable inquiry to verify that all information therein is well grounded in fact, and warranted by existing law or a good faith argument for extension, modification, or reversal of existing law.

(Sec. 320) Revises automatic stay guidelines to provide that in the case of an individual filing under Chapters 7, 11, or 13, the automatic stay shall terminate 60 days after a request for its release by a party in interest, unless the court orders or the parties agree to a longer time.

(Sec. 321) Revamps guidelines governing a Chapter 11 business reorganization case filed by an individual to: (1) identify the property of the estate in bankruptcy; and (2) revise the contents, confirmation, and modification of a reorganization plan.

(Sec. 322) Prohibits a debtor from exempting from the estate in bankruptcy any amount of interest acquired during the two years before petition filing that exceeds in the aggregate \$100,000 in value in: (1) real or personal property used as a residence; (2) a cooperative that owns property used as a residency by the debtor or debtor's dependent; or (3) a burial plot for the debtor or debtor's dependent.

(Sec. 323) Excludes employee benefit plan participant contributions from the property of the bankruptcy estate.

(Sec. 324) Amends the Federal judicial code to: (1) grant the district court presiding over a title 11 case exclusive jurisdiction over property of the debtor and of the estate, as well as to claims relating to employment or disclosure of bankruptcy professionals; and (2) increase bankruptcy fees and the amounts deposited as offsetting collections to both the United States Trustee Systems Fund, and to a special fund of the Treasury available to offset funds appropriated for court operation and maintenance.

(Sec. 326) Exempts from the prohibition against sharing of compensation or reimbursement with respect to administrative expenses of a debtor's estate any sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services, and with rules of professional responsibility applicable to attorney acceptance of referrals.

(Sec. 327) Declares that the value of personal property securing an allowed claim shall be determined based on its replacement value as of the date of petition filing without deduction for costs of sale or marketing.

(Sec. 328) Revises requirements for the assumption by a trustee of a defaulted executory contract or unexpired lease. Exempts from the requirement that the trustee cure such a default any default that is a breach of a provision relating to the satisfaction of any non-penalty provision relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real

after the time of assumption. Provides, however, that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance such default shall be compensated in accordance with specified law.

Makes the same exception to requirements a plan must meet to avoid impairing a class of claims or loss incurred by such holder resulting from a failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to certain

(Sec. 329) Makes nondischargeable in bankruptcy any debts resulting from violations of laws relating

Title IV: General and Small Business Bankruptcy Provisions - Subtitle A: General Business

or action by a securities self-regulatory organization to enforce compliance with its regulations, or of sanctions.

trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan for

(Sec. 403) Increases from ten days to 30 days the length of time for the perfection of a transfer of

(Sec. 404) Amends guidelines for rejection and surrender of executory contracts and unexpired

(Sec. 405) Authorizes a Chapter 11 trustee to increase the membership of a committee of creditors

determination that such creditor holds claims of the kind represented by the committee, the aggregate

Requires such committee to provide to certain creditors who are not committee members access to

(Sec. 406) Prohibits the bankruptcy trustee from avoiding a warehouseman's lien for costs incidental to the storage and handling of certain goods.

(Sec. 407) Directs the bankruptcy court to treat the compensation awarded a trustee as a commission.

(Sec. 408) States that acceptance or rejection of a chapter 11 plan may be solicited from a holder of a claim or interest if: (1) the solicitation complies with applicable nonbankruptcy law; and (2) it was made before commencement of the case in a manner complying with applicable nonbankruptcy law.

(Sec. 409) Prohibits the bankruptcy trustee from avoiding a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,000.

(Sec. 411) Limits the extensions of time permitted for filing a Chapter 11 reorganization plan.

(Sec. 412) Denies a discharge in bankruptcy for a debt for a fee or assessment arising from a debtor's interest in a lot in a homeowners association for as long as the debtor retains specified interests in such lot.

(Sec. 413) Authorizes a creditor holding a consumer debt to participate in a meeting of creditors in a chapter 7 or 13 case, either alone or in conjunction with an attorney.

(Sec. 414) Revises the definition of "disinterested person" to remove persons who are not investment bankers (thus allowing investment bankers for any outstanding security of the debtor to be treated as a disinterested person).

(Sec. 418) Amends the Federal judicial code to authorize the district court or bankruptcy court to waive the Chapter 7 filing fee and other attendant fees for certain Chapter 7 debtors whom the court has determined to be unable to pay fees in installments.

(Sec. 419) Directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States to propose amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing chapter 11 debtors to disclose information relating to the value, operations, and profitability of any closely held corporation, partnership, or other entity in which the debtor holds a substantial or controlling interest.

Subtitle B: Small Business Bankruptcy Provisions - Sets forth mandatory factors for court consideration in determining whether the disclosure statement regarding a small business reorganization plan provides adequate information.

(Sec. 432) Defines a small business debtor, generally, as a person (including a debtor affiliate) with not more than \$3 million in aggregate non-contingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief (excluding debts owed to one or more affiliates or insiders).

(Sec. 433) Directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference (Advisory Committee) to propose for adoption standardized disclosure statements and plans of reorganization for small business debtors.

(Sec. 434) Sets forth uniform national reporting requirements for small business debtors.

(Sec. 435) Directs the Advisory Committee to propose for adoption revisions to the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms enabling small business debtors to comply with such uniform national reporting requirements.

(Sec. 436) Sets forth duties and administrative procedures in small business reorganization cases, including serial filer provisions and expanded grounds for dismissal or conversion and appointment of a trustee.

(Sec. 443) Directs the Small Business Administration to study and report to the Congress on: (1) the factors that cause small businesses to become debtors in bankruptcy; and (2) how Federal bankruptcy laws can be made more efficient in assisting small businesses to retain their viability.

(Sec. 444) Revises the circumstance precluding a secured single asset real estate interest creditor's relief from an automatic stay where a debtor has commenced monthly payments to each such creditor to allow the debtor, in the debtor's sole discretion, to make such payments from rents or other income generated before or after the commencement of the case by or from the property. Requires such payments in an amount equal to the interest on the value of the creditor's interest in the real estate, determined at the then-applicable nondefault contract rate of interest (currently, at the fair market rate).

(Sec. 445) Allows as an administrative expense, for the two-year period following either the later of the rejection date or date of actual turnover of the premises, all monetary obligations due from a

nonresidential real property lease previously assumed and subsequently rejected under the requirements governing executory contracts and unexpired leases.

Title V: Municipal Bankruptcy Provisions - Makes technical amendments to requirements for a municipal bankruptcy petition.

Title VI: Bankruptcy Data - Amends the Federal judicial code to require the clerk of each district to compile bankruptcy statistics for individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13. Directs the Administrative Office of the United States Courts (Administrative Office) to make such statistics public and to report them annually to the Congress.

(Sec. 602) Instructs the Attorney General to promulgate requirements for uniform forms for: (1) final reports by trustees in cases under chapters 7, 12, and 13; and (2) periodic reports by chapter 11 debtors or trustees in possession. Prescribes report contents.

(Sec. 603) Prescribes guidelines for the Attorney General and the Judicial Conference of the United States (as appropriate) to establish procedures to audit debtors.

(Sec. 604) Expresses the sense of the Congress that: (1) the national policy should be that all public record data held in electronic form by bankruptcy clerks should be released in electronic form in bulk to the public subject to appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and (2) a bankruptcy data system should be established in which a single set of data definitions are used to collect data nationwide, and in which all data for any particular bankruptcy case are aggregated in the same electronic record.

Title VII: Bankruptcy Tax Provisions - Amends the bankruptcy code to modify the treatment of certain tax liens.

(Sec. 702) Provides that a claim for debtor's liability for fuel tax which is filed by the base jurisdiction designated under the International Fuel Tax Agreement shall be allowed as a single claim.

(Sec. 703) Mandates that the clerk of each district maintain a listing under which a governmental entity responsible for the collection of taxes within such district may designate an address for service of requests and describe where further information for filing such requests may be found.

(Sec. 704) Prescribes the rate of interest to be paid on mandatory interest payments on tax claims.

(Sec. 705) Revises the specifications for income tax claims receiving eighth priority (allowed unsecured claims of governmental units). Provides for tolling of the time periods covering such tax

claims for stays of proceedings in a prior bankruptcy case, and the pendency or effect of offers in compromise or installment agreements.

(Sec. 707) Prohibits discharge under Chapter 13 of any debt for fraudulent tax payments.

(Sec. 708) States that confirmation of a bankruptcy plan does not discharge a corporate debtor from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted to evade or defeat such tax.

(Sec. 709) Amends the automatic stay of U.S. Tax Court proceedings concerning the debtor to restrict such stay to: (1) a corporate debtor's tax liability for a taxable period the bankruptcy court may determine; or (2) concerning an individual debtor's tax liability for a taxable period ending before the order for relief.

(Sec. 710) Includes among the requirements for court confirmation of a Chapter 11 bankruptcy plan which includes tax claims, that the debtor, at the minimum, make regular cash installment payments over a period ending not later than five years after the date of entry of the order for relief, and in a manner not less favorable than the most favored nonpriority unsecured claim provided for in the plan.

(Sec. 711) Prohibits the avoidance of statutory tax liens by certain purchasers.

(Sec. 712) Amends the Federal judicial code to require officers and agents conducting any business under court authority to pay all Federal, State and local taxes when due in the course of the business, unless it is a property tax secured by a lien against estate property which is abandoned by the bankruptcy trustee, or payment of the tax is excused under a specific bankruptcy law. Cites circumstances in which payment of such taxes may be deferred in a case pending under chapter 7 until final distribution is made.

Entitles to administrative expense priority payment certain secured and postpetition unsecured taxes incurred by the bankruptcy estate, including ad valorem property taxes.

Declares that a governmental unit shall not be required to file a request for the payment of administrative expenses relating to a tax liability or tax penalty.

Allows a trustee to recover from property securing a claim for the payment of all ad valorem property taxes relating to such property.

(Sec. 713) Requires as a condition for payment of tardily filed priority tax claims that they be filed either before the trustee commences distribution or ten days following the mailing to creditors of the

summary of the trustee's final report, whichever is earlier (currently, before the trustee commences distribution of the estate).

(Sec. 714) Makes nondischargeable any obligations based on income tax returns or equivalent reports or notices prepared by tax authorities.

(Sec. 715) Declares that an estate's liability for unpaid tax is discharged upon payment of such tax according to certain requirements.

(Sec. 716) Conditions court confirmation of a chapter 13 bankruptcy plan upon filing by the debtor: (1) of all prepetition tax returns; and (2) before the day on which the first meeting of the creditors is convened, of all tax returns for taxable periods ending in the four-year period that ends on the date of the filing of the petition. Authorizes the court to dismiss a plan or convert it to chapter 7, whichever is in the best interests of the creditors and the estate, if a chapter 13 debtor fails to comply with such time frame.

Expresses the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should propose for adoption amended Federal Rules of Bankruptcy Procedure pertaining to objections to tax returns and to plan confirmation.

(Sec. 717) Redefines "adequate disclosure," for postpetition disclosure and solicitation purposes, to include full discussion of the potential material Federal and State tax consequences of the plan to the debtor and to a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case.

(Sec. 718) Denies an automatic stay (unless specified conditions are met) to the setoff of an income tax refund for a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief.

(Sec. 719) Revises special provisions related to the treatment of State and local taxes, including the creation of a separate taxable estate when such is done for Federal tax purposes.

(Sec. 720) Provides that if the debtor fails to timely file a tax return or obtain an extension, a taxing authority may petition the court to convert or dismiss a case, whichever is in the best interests of creditors and the estate.

Title VIII: Ancillary and Other Cross-Border Cases - Expands the scope of bankruptcy law to incorporate the Model Law on Cross-Border Insolvency, and to establish a statutory mechanism for: (1) dealing with cases of cross-border insolvency; and (2) cooperation between U.S. courts, trustees,

representatives and creditors to Federal and State courts; (2) recognition of a foreign proceeding and relief; (3) cooperation and direct communication with foreign courts and representatives; and (4)

Title IX: Financial Contract Provisions - Amends the Federal Deposit Insurance Act (FDIA) to redefine specified contracts, agreements, and transfers entered into with an insolvent insured

(Sec. 901) Declares that no person shall be stayed or prohibited from exercising any right to cause the acceleration of any qualified financial contract with an insured depository institution which arises after such appointment.

(Sec. 902) Declares that no provision of law shall be construed as limiting the right or power of the to transfer, disaffirm, or repudiate any qualified financial contract of a failed institution.

Prohibits enforcement of a walkaway clause in a qualified financial contract of a failed insured extinguishes it solely because of such party's status as a nondefaulting party).

(Sec. 903) Revises guidelines governing transfers of qualified financial contracts of an insolvent branch or agency) (but only when the contractual rights of the parties to such qualified financial contracts are enforceable substantially to the same extent as permitted under such Act); and (2)

include a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by FDIC regulation.

insured depository institution until after the receiver's appointment, or after receipt of notice that the contract has been transferred.

conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding: (1) a bridge bank; or (2) an FDIC-

organization, or at the time of a purchase and assumption transaction between such institution and the FDIC as receiver for a depository institution in default.

(Sec. 904) Prescribes guidelines for: (1) the disaffirmance or repudiation of qualified financial contracts by the conservator or receiver for a failed depository institution; and (2) the treatment of a master agreement as a single agreement and a single qualified financial contract.

(Sec. 906) Amends the Federal Deposit Insurance Corporation Improvement Act of 1991 to make conforming amendments with respect to: (1) bilateral netting contracts; (2) security agreements; (3) clearing organization netting contracts; (4) contracts with uninsured national banks; and (5) contracts with uninsured Federal branches or agencies.

(Sec. 907) Amends the Federal Bankruptcy Code to reflect the changes made by this Act and to: (1) deny an automatic stay to set-offs under certain swap agreements and netting agreements; and (2) restrict the avoidance power of the bankruptcy trustee regarding certain master netting agreement transfers to those transfers that are fraudulent in nature. Defines financial participants.

Sets forth statutory guidelines for: (1) the termination or acceleration of designated contracts and agreements; and (2) commodity broker and stockbroker liquidation with respect to the priority of unsecured claims, or customer property or distributions.

(907A) Authorizes consultation between the Securities and Exchange Commission and the Commodity Futures Trading Commission with respect to: (1) whether and how security futures products will be treated as commodity contracts or securities in liquidation cases where a person is both a securities broker and a commodity broker; and (2) the treatment in such a liquidation of accounts in which both commodity contracts and securities are carried.

(Sec. 908) Amends the FDIA to authorize the FDIC to prescribe more detailed recordkeeping requirements for qualified financial contracts (including market valuations) by insured depository institutions.

(Sec. 909) Exempts specified collateralization agreements from the contemporaneous execution requirement that renders invalid certain agreements against FDIC interests in certain asset acquisitions.

(Sec. 910) Amends Federal bankruptcy law to specify the date for the measure of damages in connection with: (1) rejection by the bankruptcy trustee of designated contracts and agreements

relating to executory contracts and unexpired leases; or (2) the liquidation, acceleration, or

(Sec. 911) Amends the Securities Investor Protection Act of 1970 to provide that neither the filing of a protective decree by the Securities Investor Protection Corporation, nor any court protective order, designated contracts and agreements. Allows such application, order, or decree, however, to operate as a stay of foreclosure on securities collateral pledged by the debtor, whether or not with respect to agreement.

(Sec. 912) Declares that property of the bankrupt estate does not include any eligible asset (or its eligible entity in connection with an asset-backed securitization (except to the extent that such asset, or its proceeds or value, may be recovered through avoidance by the bankruptcy trustee).

Adjustment of Debts of a Family Farmer with Regular Annual Income, as amended by this Act (thereby reinstating family farmer bankruptcy relief).

(Sec. 1003) Cites circumstances under which the claim of a governmental unit that arises from the disposition of a farm asset used in the debtor's farming operation shall be treated as an unsecured

(Sec. 1004) Increases from \$1.5 million to \$3 million the maximum aggregate debts an individual or individual and spouse engaged in a farming operation may have to qualify as family farmers for debt noncontingent, liquidated debts (with certain exclusions) arising out of such a farming operation.

(Sec. 1005) Repeals the requirement that the family farmer and spouse receive over 50 percent of requirement to be met during at least one of the three taxable years preceding the taxable year in which the bankruptcy petition is filed.

notwithstanding the objection of the trustee or holder of an allowed unsecured claim. Prohibits any

post-confirmation modification of a bankruptcy plan that would increase the amount of payments that were due before such modification. Provides that, unless the debtor proposes the modification, a modified plan may not: (1) require payments to unsecured creditors in any particular month greater than debtor's disposable income for that month based on an increase in debtor's disposable income; or (2), if the modification takes place in the plan's last year, require any payments that would leave the debtor with insufficient funds after plan completion to carry on the farming operation.

Title XI: Health Care and Employee Benefits - Amends bankruptcy provisions to prescribe guidelines for disposal of the patient records of a health care business (not including a health maintenance organization) that commences a proceeding for debtor relief and the trustee does not have sufficient funds to pay for the storage of patient records as required by law.

(Sec. 1103) Allows an administrative expense claim for the costs of closing a health care business, including disposal of patient records and transfer of patients to another health care business.

(Sec. 1104) Requires the bankruptcy court to appoint an ombudsman to represent the interests of the patients of a health care business within 30 days after commencement of a case under chapter 7 (Liquidation), 9 (Adjustment of Debts of a Municipality), or 11 (Reorganization).

(Sec. 1105) Requires the bankruptcy trustee to use all reasonable and best efforts to transfer patients from the health care business in the process of being closed to an appropriate substitute.

(Sec. 1106) Denies an automatic stay to a debtor's exclusion by the Secretary of Health and Human Services from participation in the Medicare program or any other Federal health care program (thus precluding the debtor's continuation or reinstatement in such a program).

Title XII: Technical Amendments - Makes technical corrections to Federal bankruptcy, judicial, and criminal law.

(Sec. 1201) Redefines single asset real estate to exclude family farms and to repeal the \$4 million ceiling on the amount of noncontingent, liquidated secured debts on such property. Defines the term "transfer" to include: (1) creation of a lien; (2) retention of title as a security interest; (3) foreclosure of the debtor's equity of redemption; and (4) every mode of disposing of property or parting with an interest in property.

(Sec. 1202) Requires triennial adjustment of the \$5,000 value of certain implements, professional books, tools of the trade, farm animals, and crops which a debtor may exempt from the property of the estate (protecting them from creditors' liens).

(Sec. 1206) Provides that a trustee or a creditors' and equity security holders' committee may pay a professional person they employ on a fixed or percentage fee basis, as well as on other bases already permitted.

(Sec. 1208) Excludes from compensable professional services any expenses incurred for an attorney or an accountant by an individual member of a creditors' and equity security holders' committee.

(Sec. 1209) Declares nondischargeable in bankruptcy a debt for death or personal injury caused by the debtor's operation of a vessel or aircraft while intoxicated from alcohol, a drug, or other substance.

(Sec. 1213) Revises guidelines governing preferences to provide that, if the trustee avoids a security interest given between 90 days and one year before the date of the filing of the petition, by the debtor to a non-insider for the benefit of a creditor that is an insider, then such security interest shall be considered to be avoided only with respect to the insider creditor.

(Sec. 1222) Permits the bankruptcy trustee to sell, use, or lease property in accordance with nonbankruptcy law governing the transfer of property by nonprofit charitable corporations, if doing so is not inconsistent with certain relief granted under the automatic stay.

(Sec. 1223) Extends from 20 to 30 days the length of time after a debtor receives possession of property for perfection of a security interest in such property created by a transfer which the trustee may not avoid.

(Sec. 1224) Amends the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 to repeal the October 1, 2002, alternate effective date for application of specified amendments of such Act regarding U.S. Trustees to certain judicial districts for Alabama and North Carolina. (Makes such amendments applicable to such districts only if they elect to be included in certain bankruptcy regions.)

(Sec. 1225) Bankruptcy Judgeship Act of 2001 - Amends the Federal judicial code to mandate appointments for additional temporary bankruptcy judgeships in California, Delaware, Florida, Georgia, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina Pennsylvania, Puerto Rico, Tennessee, Virginia, and South Carolina. Provides that the first vacancy occurring in such district five years or more after a judge is appointed under this Act shall not be filled.

Extends temporary bankruptcy judgeship positions authorized for the northern district of Alabama, and the districts of Delaware, Puerto Rico, and the eastern district of Tennessee.

(Sec. 1226) Prescribes compensation guidelines for the services and expenses of a trustee who has petitioned the court to convert or dismiss a chapter 7 case.

(Sec. 1227) Denies an automatic stay with respect to creation or perfection of a statutory lien for a special tax or special assessment on real property whether or not ad valorem, if the tax or assessment comes due after the filing of a petition for debtor relief.

(Sec. 1228) Requires the Director of the Federal Judicial Center to develop materials and conduct training useful to courts in implementing this Act.

(Sec. 1229) Amends Federal bankruptcy law to modify the right of the seller of goods to the debtor to reclaim such goods if the debtor received such goods while insolvent. Limits the period of receipt to 45 days after commencement of the case, and the time during which the seller may demand reclamation to 45 days after receipt, or before 20 days after commencement of the bankruptcy case.

(Sec. 1230) Prohibits a court from granting a discharge in a chapter 7 case, or from confirming a reorganization plan in a chapter 11 or 13 case, unless requested tax documents are filed with or otherwise provided to the court.

(Sec. 1231) Expresses the sense of Congress that: (1) consumer credit may sometimes be offered indiscriminately without lender action to ensure consumer repayment capacity, and in a manner which may encourage additional debt accumulation; and (2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

Instructs the Board of Governors of the Federal Reserve System to study indiscriminate solicitation and extension of credit by the credit industry. Authorizes the Board to: (1) promulgate regulations requiring additional disclosures to consumers; and (2) take measures to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

(Sec. 1232) Excludes from property of the estate in bankruptcy certain tangible personal property (other than securities or written or printed evidences of indebtedness or title) pledged or sold by the debtor as collateral for a loan or money advance, and: (1) the pledgee or transferee possesses such property; (2) the debtor has no obligation to repay or redeem; and (3) neither the debtor nor the trustee has exercised any right to redeem in a timely manner.

(Sec. 1233) Amends the Federal judicial code to authorize private trustees and standing trustees, after exhausting administrative remedies, to obtain judicial review in a U.S. district court of: (1) any suspension or termination; or (2) denial of a claim of actual, necessary expenses.

Deems any judgment, decision, order, or decree of a bankruptcy judge to be the judgment, decision, order, or decree of an appellate district court, unless the district court files its own decision on the

Title XIII: Consumer Credit Disclosure - Amends the Truth in Lending Act to require: (1) specified and (2) disclosure of a toll-free number to call for an estimate of the time required to repay the balance making only minimum payments.

a toll-free number for the same purpose in the case of a creditor with respect to which the FTC is enforcing compliance with such Act. Directs the Board of Governors of the Federal Reserve System

(Sec. 1301) Authorizes the Board to study and report to Congress on the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying

(Sec. 1302) Mandates additional disclosures in credit applications and advertising about credit extensions secured by a dwelling which exceed the dwelling's fair market value, stating that the

(Sec. 1303) Requires specified additional disclosures for: (1) introductory rates and temporary annual percentage rates of interest; (2) Internet-based credit card solicitations; and (3) late payment deadlines

(Sec. 1306) Prohibits a creditor from terminating an open end consumer credit account before its expiration date solely because finance charges have not been incurred on such account.

(Sec. 1307) Authorizes the Board to study and report to Congress on certain consumer protections limiting consumer liability for unauthorized use of a debit card or similar access device.

to dependent students have upon the rate of bankruptcy cases filed under Federal law.

(Sec. 1309) Instructs the Board to promulgate regulations to provide guidance regarding the meaning

(Sec. 1310) Prohibits a Federal court from recognizing or enforcing any judgment rendered in a foreign court if such court determines that the foreign judgment effectuates a right or interest derived from fraudulent misrepresentation or omission that occurred in the United States during a specified period.

Title XIV: General Effective Date; Application of Amendments - Sets forth the effective date of this Act and the application of its amendments.

Sales Tax Information

Updates in Publication 5 (08/00):

- Trade-ins, rebates, lease transactions updated - page 7
- Shop supplies information expanded - page 11
- Nonresident affidavit information expanded - pages 6, and 15 through end

Nonresident affidavit issues to be aware of:

- New form TC-583 revision dated 03/00
- If the company is doing business in Utah, they cannot use the nonresident affidavit
- All questions must be answered
- All buyers / co-signers must qualify
- Send in the complete form, not just the bottom portion
- If the vehicle is being shipped out of state, do not complete the nonresident affidavit, use the TC-757 Affidavit of Out of State Delivery instead

MVED Information

Transporter We are getting a lot of complaints from local law enforcement agencies on the misuse of transporter plates.

is a violation of Utah Code. Reminder, transporter plates can be only used to operate a vehicle solely:

1. to and from a detail or repair shop;
2. to a delivery point in, out, or through the state.

Temporary Permits: MVED audits have found that some dealerships are very lax on the record keeping, keeping track of the number of permits issued by their dealerships. The prompt return of vehicles. Last year, dealerships were issued over \$1,200,000 worth of temporary permits. We encourage dealers to pay close attention to the record keeping on temporary permits to ensure they are timely.

Odometer MVED is working with the National Highway Traffic Safety Administration, will be doing a compliance record review and education program this year. Dealerships up to 25% on odometer rollover, record keeping and retention laws. MVED is also planning to use more resources this year for odometer fraud investigation, using both pro-active and traditional investigative methods in targeting odometer fraud crime groups.

Auto theft remains a problem to dealers and the public in Utah. MVED investigators recovered 252 stolen motor vehicles last year with an estimated value of \$1,489,200.00.

increase effectiveness in auto theft investigation. MVED is working with local police through out the state in theft investigation identification. A federal grant also allow Utah to establish a database and program for a theft prevention initiative called "Your Car". This program encourages vehicle owners to sign an agreement with the division to receive special training that will allow police officers to stop the vehicle when the vehicle is observed from the hours of 1:00 AM to 5:00 AM. The officers just insure the vehicle or someone else the owner's vehicle is driving vehicle.

Advertising: MVED is seeing some issues in dealer advertising where savings and discount such as the wording and statements as "was at, priced....." being used. MVED is reviewing administrative or sanctions. If you need information on advertising laws, please contact MVED and

DMV Information

Three important items:

1. MVA
2. MVA
3. MVA!

Appendix A

Utah State Tax Commission's Motor Vehicle/Marine Dealer, Body/Repair Shops, Sales and Use Tax Information - Publication 5