

# Legislative Summary 2012 General Session

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# HOUSE BILLS

## GRAND JURY AMENDMENTS

**HB 11**

**Rep. Kay McLiff**

A bill was run last year to require 72 hours notice for a minor who was called to testify before a grand jury. Representative McLiff filed this bill to provide exceptions to the 72 hour notice. The subpoena may be served in less than 72 hours before the grand jury proceeding if the child was intentionally concealed to prevent the service or a shorter period is reasonably necessary to prevent: a risk to the minor's safety; concealment of the minor; intimidation or coercion of the minor or undue influence etc.

The most important provision is actually a clarification that the service requirement may not be used as a basis to invalidate the minor's testimony or any indictment issued by the grand jury.

Naturally legislators could not leave this alone and put in some requirements that the parents be involved in the process where they are not the target or engaged in frustrating the purposes of the section.

In the highly unlikely event that you ever subpoena a child victim before a grand jury you may want to review this statute and the Rules of Criminal Procedure as they arguably take priority over the statute in this area of procedure.

**Amends:** 77-10a-13

## OFFENDER REGISTER REVIEW

**HB 13**

**Rep. Jack Draxler**

*Introduction.* This bill is closely connected to HB 17, Sex Offender Registry, and HB 18, Kidnapping Offender Amendments. Because the three bills are not entirely consistent, coordination clauses were used in the event all three passed (which happened). HB 13 is the primary bill in terms of substantive law changes - so to speak - as it contained the "trump" coordinating clause which creates NEW SECTION 77-41-112:

(1) An offender may petition the court where the offender was convicted of the offense requiring registration for an order removing the offender from the Sex Offender and Kidnap Offender Registry if:

(a) the offender was convicted of violating:

(i) Section 76-5-301, Kidnapping, and the conviction of violating Section 76-5-301 is the only conviction for which the offender is required to register;

(ii) Section 76-5-304, Unlawful Detention, and the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;

(iii) Section 76-5-401, unlawful sexual activity with a minor and, at the time of the offense, was not more than 10 years older than the victim; or

(iv) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, was not more than 10 years older than the victim;

Under this new language, persons convicted of these 'lighter' sex and kidnap offenses will be able to seek removal from the sex and kidnap offender registry faster than they might otherwise. This will be important to keep in mind when considering plea offers or reductions of certain offenses.

An offender must first seek a certificate of eligibility for removal from the registry with BCI. This is not an expungement - it is removal from the registry only. To qualify, an offender with a conviction described above must meet these criteria:

- Five years have passed since completion of the sentence.
- All treatment has been completed.
- No new convictions (excluding traffic offenses) occur in the meantime.
- All restitution has been paid.
- The offender followed all registration requirement during the period he was required to register; AND
- The victims and/or her parents, and prosecutors, are given a chance to object.

Importantly, prosecutors will have new responsibilities. If BCI grants a certificate of eligibility and a petition for removal is filed, prosecutors have the duty to serve notice of the Petition to victims via first class mail, and provide the court with the original PSR, any evaluations, or other information thought important, from the original case file. A hearing on the request may be held if deemed necessary, and shall be held, if requested by a victim or the prosecutor. A victim has 45 days to respond to the petition.

(4) (c) If the court determines that it is not contrary to the interests of the public to do so, it may grant the petition and order removal of the offender from the registry.

(d) If the court grants the petition, it shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.

(5) The office of the prosecutor shall notify the victim of the court's decision in the same manner as notification was provided in Subsection (3)(a).

Finally, this bill creates a new offense: "An offender who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6"

**Amends:** 77-27-21.5, 78A-2-301, 77-41-102 and 77-41-109.

**Enacts:** 77-41-12

## **CIVIL COMMITMENT AMENDMENTS**

**HB 14**

**Rep. Bradley Daw**

The impetus for this bill came from a case in Utah county where a defendant was found

incompetent to stand trial and after the forensic commitment time expired could not be civilly committed. The reason for this was that when this statute was amended a decade ago to make it “tougher” the definition of danger to others was actually narrowed severely to include only the risk of causing serious bodily injury to another. In this case the defendant has allegedly committed rape which of course did not involve serious bodily injury by statutory definition.

There was great public concern about this case. Many wanted to be able to use civil commitment anytime a person is not competent to stand trial. Such a solution is simply not available. One cannot be committed indefinitely solely upon his incompetency to stand trial for a crime. *Jackson v. Indiana*, 406 US 715(1972). Such a commitment would violate the due process clause of the 14<sup>th</sup> Amendment. Civil commitment must be based on a mental illness coupled with a finding of a danger to himself or others. While there is constitutional authority for setting up a system where sex offenders might be civilly committed based on pedophilia as a “mental abnormality” under statute, *Kansas v. Hendricks*, 521 US 346(1997), neither the subcommittee of CCJJ studying the issue nor legislative leadership had any interest in setting up such a system. Such a system would require a complete overhaul of the mental health system which would not necessarily be a good idea.

To understand what this bill does, one first needs to look at 62a-15-631(10) which provides for commitment of an individual 18 years of age or older where the court finds by clear and convincing evidence that the patient has a mental illness and because of the mental illness the patient poses a substantial danger to self or others. “Substantial danger” is defined in 62a-15-602(13) as ...”due to mental illness...is a serious risk to...cause serious bodily injury”. To this definition this bill adds “or engage in harmful sexual conduct”. The bill then defines under 62a-15-602 the term “harmful sexual conduct”. That includes “any of the following conduct upon an individual without the individual’s consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in 76-5-406(1)-(12). The bill then lists penetration type sexual acts plus “any sexual act causing substantial emotional injury or bodily pain”.

If you happen to be involved in attempting to civilly commit a defendant it is important to recognize that the statute requires that the person is a risk to commit the crime because of the person’s mental illness. That nexus is not intended to be simple burden. This bill is not designed to flood the county mental health facilities with sex offenders. It is intended only to expand the definition of danger to others to include sex offenses committed by one who is mentally ill.

**Amends:** 62a-15-602 and 62a-15-631

## **DRIVER LICENSE REVISIONS**

**HB 16**

**Rep. Stewart Barlow**

This bill adds “temporary regular license certificate” and “temporary limited-term license certificate” to the list of documents considered license certificate evidence in section 53-3-102(20)(b), and those certificates shall be recognized and have the same rights and privileges as a regular license certificate or a limited-term license certificate. Drivers who have been issued one of those permits are required to have them in their immediate possession while driving. They shall have expiration dates printed on them. The features on other licenses (regular license certificate, limited-

term license certificate, driving privilege card) showing the holder is under 21 years old (alcohol), or under 19 years old (tobacco), are not required to be indicated on these two certificates.

**Amends:** 53-3-102 and 53-3-207.

## **SEX OFFENDER REGISTRY CHAPTER**

### **HB 17**

**Rep. Jack Draxler**

This is one of the larger criminal bills this year and coordinates with HB 13 and HB 18. Most of the language fixes cross-references as necessary across many statutes including licensing, ID cards, DNA specimens, some criminal provisions, expungement, etc. The bill does not make substantive changes in sex offender requirements (except as noted in HB 13 and HB 18, which are incorporated into the new chapter structure by coordination clauses).

HB 17 thus creates a new “Kidnap & Sex Offender Registry” Chapter which consolidates much of the who, when’s, and where’s, & why not’s of sex offender registry requirements and removal into one chapter, with separate and easier to find sections. So, for example, the two types of offenders: “kidnap offender” - and “sex offender” remain unchanged, but whereas before the definitions would be found in the first part of UCA 77-27-21.5, that section is now repealed, and you’d look to the new section 77-41-102, Definitions.

The bill similarly moves “Department Duties” & information to be maintained language from paragraph (2) forward of UCA 77-27-21.5, to the new sections 77-41-103 through 105.

And, section 77-41-105 now replaces 77-27-21.5 paragraph (10), which outlines duties of offenders, including what information is required to be provided to the registry.

**Amends:** 41-3-205.5, 41-3-209, 53-3-205, 53-3-216, 53-3-413, 53-3-804, 53-3-806.5, 53-3-807, 53-10-404, 62A-7-104, 63G-2-302, 76-3-402, 77-27-21.7, 77-27-21.8 and 77-40-105.

**Enacts:** 77-41-101 through 77-41-111.

**Repeals:** 77-27-21.5 (former sex & kidnap offender requirements)

## **KIDNAPPING OFFENDER AMENDMENTS**

### **HB 18**

**Rep. Fred Fox**

It is this bill that creates new language to provide that those convicted of simple Kidnapping & Unlawful Detention could petition for removal from the kidnap registry, but as noted earlier, this portion was adopted by the trump coordination clause of HB 13, which created new Section 77-41-112, already discussed above.

The coordinating clause of this section also had the following language, which was similarly coordinated with HB 13 and 17, and is thus included in the new 77-41-109:

77-41-109(2): “(2) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person

convicted of any offense listed in Subsection 77-41-102(7) or (14) is not relieved from the responsibility to register as required under this section, unless the offender is removed from the registry under Section 77-41-112."

This language makes clear that removal from the registry and expungement are separate things.

**Amends:** 77-27-21.5

## **STATE ISSUED IDENTIFICATION NUMBERS**

**HB 19**

**Rep. Wayne Harper**

Prohibits state government entities and political subdivisions as defined in section 63G-7-102 from using a nine digit number as a person's identification number with the government entity. This applies if the government entity's information technology system is: capable within existing budget of creating and using an identification number that is not a nine digit number; or undergoing significant re-programming or design change and the elimination of the nine digit number can be accomplished as part of the reprogramming or redesign; or the nine digit number is a combination of letters and numbers, is the person's social security number and its use is necessary for the government entity, or the nine digit number is not the person's social security number but the government entity can insure the nine digit number is not another person's active social security number. The State Tax Commission is exempt from the provisions of this statute.

**Enacts:** 63G-15-101.

## **ELECTION LAW AMENDMENTS**

**HB 20**

**Rep. Curt Webb**

In municipal general election years, cities must publish the notice for open municipal offices and the dates for filing a declaration of candidacy on or before February 1<sup>st</sup>. The acceptable ways to provide this notice are expanded. In cities of the third, fourth or fifth class using the convention method certificates of nomination must be filed with the clerk no later than 80 days before the municipal general election and new political parties must file their petitions with the city record at least 55 days before the municipal primary election. Bill also contains other minor changes.

**Amends:** 10-2-301, 20A-1-102, 20A-2-205, 20A-3-202, 20A-4-106, 20A-5-206, 20A-9-404, 20A-11-701, 20A-11-802, 20A-11-901, 20A-11-1001, 20A-11-1305, 20A-11-1503, 20A-12-303 and 20A-12-305.

## **DRIVER LICENSE EMERGENCY CONTACT DATABASE**

**HB 21**

**Rep. Marie Poulson**

Requires the Driver License Division ("DLD") to establish an emergency contact database whereby holders of a license certificate, learner permit, identification card, or another other type of



license or permit can provide contact information for up to two people the holder wants contacted by law enforcement if the holder is involved in a motor vehicle accident or other emergency situation and is unable to communicate with the contact person or persons. Law enforcement officers may share the information in the emergency contact database with other public safety workers on the scene of a motor vehicle accident or other emergency situation, as needed to conduct official law enforcement duties. The information in the emergency contact database may only be used for the purposes stated in this section, and may not be used for criminal investigation purposes. The information in the emergency contact database shall be accessible only by DLD employees, law enforcement officers and employees or authorized agents of a law enforcement agency. The bill grants DLD rule-making power to implement the database, protects law enforcement officers and agencies from liability if they make good faith efforts to contact the designated person or persons and cannot, and it protects law enforcement officers and agencies from liability that may arise from the proper use of the database.

**Enacts:** 53-3-205.6.

**Effective date:** July 1, 2012.

## **CENTRALIZED NEW HIRE AND REGISTRY ACT AMENDMENTS**

**HB 22**

**Rep. Jeremy Peterson**

This legislation brings Utah in line with Federal law in the area of reporting of new hires, ensuring continued federal funding. The statute mandates the way employers must report new hire information to the Department of Workforce Services, including requiring that employers report “the date labor or services for compensation are first performed by an employee.”

**Amends:** 35A-7-102 and 35A-7-104.

## **PATIENT IDENTITY VALIDATION**

**HB 25**

**Rep. Stewart Barlow**

The bill amends §26-1-30 to add to the responsibilities of the Utah Department of Health a mandate to:

“(2) (bb) establish methods or measures for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.”

Of more interest to local governmental entities and their employees is an amendment to §63G-7-201 of the Governmental Immunity Act to provide that:

“(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit for any injury or damage resulting from the implementation of or the failure to implement measures to:

(d) adopt methods or measures, in accordance with Section 26-1-30, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.”

**Amends:** 26-1-30 and 63G-7-201.

## **FIREWORKS AMENDMENTS**

### **HB 33**

**Rep. James Dunnigan**

As a result of the 2011 fireworks amendments, last year’s legal neighborhood fireworks shows were more spectacular and produced considerably more noise than the anemic stuff allowed theretofore. Too spectacular and especially too noisy for many people who were aroused in the early morning hours by what sounded like the national guard practicing with a 105 mm howitzer next door. It turned out to be the neighbor’s teen and his buddies shooting off some of the newly legal fireworks. Lots of police agencies received lots of complaining calls, but there was little they could do.

This year’s amendments made no change from last year in the type of fireworks that can legally be sold and discharged in Utah, but it clamped down on the dates and times when fireworks may be legally sold and when they may be legally discharged.

Sale:	July Holidays:	Beginning on June 23 and ending on July 27.
	New Year’s Holiday:	Beginning on December 29 and ending on December 31.
	Chinese New Year:	Two days before and on Chinese New Year's eve.
Discharge:	Independence Day:	Beginning on July 1 and ending on July 7, between the hours of 11:00 a.m. and 11:00 p.m, except on July 4 when the hours are 11:00 a.m. to midnight.
	Pioneer Day:	Beginning on July 21 and ending on July 27, between the hours of 11:00 a.m. and 11:00 p.m., except on July 24 when the hours are 11:00 a.m. to midnight.
	New Year’s Holiday:	Beginning at 11:00 a.m. on December 31 and ending at 1:00 a.m. on the following day; or if New Year's eve is on a Sunday and the local governmental jurisdiction determines to celebrate New Year's eve on the prior Saturday, then on that prior Saturday.
	Chinese New Year:	Beginning at 11:00 a.m. on the Chinese New Year's eve and ending at 1:00 a.m. on the following day.

A person who violates the above time restrictions is guilty of an infraction.

**Amends:** 53-7-225

## SALES AND USE TAX ACT REVISIONS

**HB 34**

**Rep. Wayne Harper**

Simplifies tax code when sales tax enactment, repeal or change in tax rate takes place. Under old code, these tax changes were effective on the first day of the last billing period prior to the change. Under this bill, these tax changes are effective on the first billing statement rendered after the change goes into effect.

**Amends:** 59-12-103, 59-12-208.1, 59-12-403, 59-12-703, 59-12-806, 59-12-1102, 59-12-1302, 59-12-1402, 59-12-1803, 59-12-2004, 59-12-2103 and 59-12-2209.

## COMPETENCY TO STAND TRIAL AMENDMENTS

**HB 38**

**Rep. Kay McIff**

Again a highly publicized case raised public concern over the necessity to revisit the competency statute. HB 38 was a SWAP bill intended to take the lead in dealing with this issue by clarifying 5 areas of the statute without endangering future prosecutions. It is not wise to attempt to change the standard for competency to stand trial as that standard has been set by the US Supreme Court *Dusky v. United States*, 362 US 402(1960). *Dusky* provided that “the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him”. Any attempt to deviate from the constitutional standard can result in a very unhappy reversal of a serious case as in the reversal of the conviction of Ronald Lafferty in 1991. *Lafferty v. Cook*, 949F.2nd 1546 (1991).

The first feature of the bill was to amend 77-15-5(1) to clarify the requirements of a “Pate” hearing. *Pate v. Robinson*, 383US 375, (1966), provided that if there is a “bona fide doubt” as to the defendant’s competency to stand trial the court must hold a competency hearing. This part of the bill clarifies that if the petition alleging incompetency is not clearly sufficient on its face that the court may hold a hearing to determine whether there really is a bona fide doubt as to the defendant’s competency or whether an evaluation would be a waste of time and resources. If the court does not find a bona fide doubt then the court *may not* order such an examination. On the other hand, if such a doubt is found then of course the examination is required. In our investigation over the interim, some of the examiners expressed a concern that the scarce resources are being wasted in some cases where there really is no doubt that the defendant is competent.

The next section is an amendment to subsection (4)(d) which emphasizes the need for the examiners to specify whether the defendant is “exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant’s capacity to stand trial”. This provision is out of concern that some examiners may not be doing quite enough to eliminate the possibility that the defendant is malingering. The words for this section are taken from the definition of “malingerer” from the DSM:IV-TR V 65.2, but the DSM definition is not adopted in entirety as much of that definition is not relevant to the issues at hand.

The bill also requires the examiner to report diagnostic instruments and methods used to

determine whether or not the defendant is exhibiting false or exaggerated symptoms. The reason for this is that there is a growing body of research which demonstrates that interviews alone are not enough to eliminate the possibility of malingering and that properly designed tests are much more likely to make an appropriate distinction.

The bill also amends subsection (9)(b) to clarify that “a conflict in the opinions of the experts does not require the appointment of an additional expert unless the court determines the appointment to be necessary”. The point here is to eliminate the misconception that if there is a disagreement that a “tie breaker expert” must be engaged. We do hope you do not suggest to an experienced judge that a new expert must be called to “break the tie” or you may subject yourself to a proper lecture on the role of the judge as a fact finder who is free to ignore or believe the opinions of either expert.

The bill also makes some similar changes in subsequent hearings to be held after a defendant has been found incompetent to stand trial.

**Amends:** 77-15-5 and 77-15-6.

**See also HB 346 amendments regarding competency to stand trial.**

## **GAMBLING AMENDMENTS**

### **HB 40**

**Rep. Don Ipson**

Spaghetti & Bingo. Big Macs & Monopoly. Internet Cafes & Computer Blackjack. Only two of these combinations are meant to survive in Utah after passage of HB 40. The main change brought by the bill is to the definition of fringe gambling, which had become law just last year:

~~“(b) Fringe gambling” does not include a gambling, lottery, video gaming device, or other promotional activity which is clearly occasional and ancillary to the primary activity of the business.”~~

(b) “Fringe gambling” does not mean a promotional activity that is clearly *ancillary* to the primary activity of a business”. (*“occasional” has been removed.*)

The Bill then gives various “factors” to use in making the determination. These include:

- The manner in which the business is marketed or promoted;
- Whether & the degree to which the business provides instructions on how to use the promotional activity;
- The availability & terms of any free play option with the promotional activity;
- Whether the promotional activity provides any advantage in winning;
- Whether the goods or services promoted are offered at commercially reasonable terms; and
- Whether a prize can be parlayed into opportunities to play more.

**Amends:** 77-10-1101

## **THEFT AMENDMENTS**

**HB 44**

**Rep. Paul Ray**

A one degree penalty enhancement is provided for a person who commits a theft, robbery, burglary etc. on the premises of a merchants business, receives a trespass notice from the merchant, and then commits a theft on that same premises.

The penalty enhancement from a Class A to a 3<sup>rd</sup> Degree would include a value exceeding \$500.00 but less than \$1,500.00, plus the trespass notice. The enhancement from a Class B to a Class A would include property of a value less than \$500.00 plus the written notice. In using this enhancement one should note that requirement is only that the person “committed” the first theft before receiving the trespass notice not that the person was convicted. This could mean that in the subsequent trial for the enhanced penalty one would essentially be proving the commission of both thefts.

The word “premises” is defined as the same as “retail mercantile establishment” as defined in the retail theft statute 76-6-601. This would mean that “any place where merchandise is displayed, held or offered for sale to the public” would be the premises. It is not entirely clear whether a theft from one merchant in a shopping mall resulting in a notice from the management of the mall would enhance a theft from another merchant within the mall although it would seem to be included within the definition.

**Amends:** 76-6-412 and 78b-3-108

## **REPORTING ABUSE OF A VULNERABLE ADULT**

**HB 47**

**Rep. Carol Spackman Moss**

This clarifies Utah law concerning prohibited conduct of “emotional or psychological abuse,” which it now defines as “intimidating, threatening, isolating, coercing or harassing” a vulnerable adult. Changes to the statute also added language to prohibit prosecution of vulnerable adults who lack capacity to intentionally or knowingly engaging in such conduct.

**Amends:** 62A-3-301.

## **NOTORIOUS CRIMINAL ACTIVITY AMENDMENTS**

**HB 52**

**Rep. Curt Webb**

This law has the distinction of unanimous approval of both the Senate and the House. Old law prohibited only profits from “memorabilia” of crimes, but this new law prohibits convicted persons and persons contracting with them from profiting in any way from crimes. It prohibits any person or entity from entering into a “notoriety of crime contract” with a convicted person and profiting therefrom, and provides for a penalty for doing so of \$1,000,000.00 or up to three times the total value of the contract, whichever is greater. Agreements with convicted persons that are

prohibited are: 1) reenactments of crimes by any medium; 2) expressions of the convicted person regarding the crime; or 3) payments that directly or indirectly result from the notoriety of the crime.

This law grants the state the ability to collect any funds “derived from criminal activity” from a convicted person or from any person or entity by virtue of a contract with the convicted person. Both the prosecuting agency and the Attorney General’s office have the power to bring an action to enforce the provisions of this legislation. Funds recovered are to be paid first to victims if restitution remains outstanding and then deposited with the Crime Victims Reparation Fund.

**Amends:** 77-38-301, 77-38-302, 77-38-303.

**Repeals:** 77-18-8.3 and 77-18-8.5.

## EMINENT DOMAIN AMENDMENTS

### HB 74

**Rep. Michael Noel**

Amends §78B-6-501(6)(a), Eminent Domain -- Uses for which Right May be Exercised, to add oil and gas exploration and production as follows:

“Subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:

(6)(a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;”

Amends 78B-6-505, Negotiation and Disclosure Required Before Filing an Eminent Domain Action, to add a new subparagraph (2), establishing negotiation and notice requirements which must be fulfilled by any person, other than a political subdivision of the state, before an eminent domain action is filed. The new language provides:

“(2) A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before filing an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(b) except as provided in Subsection (3), as early in the negotiation process described in Subsection (2)(a) as practicable, but no later than 14 days before the day on which the person files an eminent domain action:

(i) advise the property owner of the owner's rights to mediation and arbitration under Section 78B-6-522, including the name and current telephone number of the property rights ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; and

(ii) provide the property owner a written statement explaining that oral representations or promises made during the negotiation process are not binding upon the person seeking to acquire the property by eminent domain.

(3) The court may, for good cause, shorten the 14-day period described in Subsection (1)(b) or (2)(b).”

Political subdivisions of the state are still governed by the pre-existing notice and disclosure requirements in subsection 78B-6-505(1).

**Amends:** 78B-6-501 and 78B-6-5.

## **PROPERTY TAXATION OF LOW-INCOME HOUSING**

**HB 75**

**Rep. Jack Draxler**

Owners of low-income housing are required to submit to the county assessor 1) a signed statement that the property continues to meet requirements of low-income housing covenant; 2) financial operating statement for prior year; 3) rent rolls for prior year; and 4) federal and commercial financing terms and agreements for the property. If this information is not provided, assessor may estimate value and impose a penalty.

**Amends:** 59-2-301.3.

## **CITY OR TOWN OPTION SALES AND USE TAX AMENDMENTS**

**HB 81**

**Rep. Brad Dee**

If a City or Town Option Sales and Use Tax is not being imposed as of June 30, 2016, it may not be imposed thereafter. If this tax is being imposed as of June 30, 2016, the city or town must repeal the tax unless a majority vote of the members of the city or the town legislative body has approved since July 1, 2012 continuation of the tax. The tax may not be continued longer than June 30, 2030.

**Amends:** 59-12-2103.

## **FORENSIC PHLEBOTOMY**

**HB 85**

**Rep. Val Peterson**

This bill amends the list of persons authorized to draw blood at the direction of a peace officer to determine its alcohol content, and the list of persons authorized to draw blood for DNA specimen analysis. Those now-identical lists are: physician, registered nurse, licensed practical nurse, paramedic, emergency medical service personnel (other than paramedics) who have been authorized by Utah Department of Health rules, and a person with a valid permit issued by the Department of Health. (See Rule R438-12 – Rule for Law Enforcement Blood Draws). Provides civil and criminal immunity for medical facilities and the persons described above arising from drawing a blood sample at the direction of a peace officer if done per standard medical practice, and provides civil immunity arising from DNA specimen-related blood draws. The list of authorized blood drawers for DUI-aircraft cases was amended to become identical with the list above (and they have similar immunity).

**Amends:** 26-1-30, 41-6a-523, 53-10-405, 58-67-305, 58-68-305, 58-71-305 and 72-10-502.

## POSTING OF TRESPASS

**HB 86**

**Rep. John Mathis**

Private land owners in the Uintah Basin are very concerned about hunters trespassing on their property which has been posted to keep them out. Section 23-20-14 is important to land owners because it not only allows them to keep hunters out of their property but when hunters are convicted under this section the Division of Wildlife Resources may revoke a person's license, tag or permit, etc, after a hearing by a hearing officer. This section currently requires posting on all corners of the property so that a person found in the property could not possibly have gotten there without passing the marked boundaries. The problem is that if a person goes into the property after having received notice as would suffice for any of the other trespass statutes, the person might still have a defense that the property was not marked on some remote corner.

The solution is obviously to include in this section the notice provisions from other trespass sections so that if a person enters after having received notice by obvious posting, actual communication etc. the person may be prosecuted under this section and action taken by the Division.

**Amends:** 23-20-14

## BOATING REVISIONS

**HB 92**

**Rep. Richard Greenwood**

This legislation was a response to the guys who hit a woman with their boat as she was swimming in Pine View Reservoir. After hitting her, they stopped and asked if she was OK but then took off and left her to bleed to death. Rep. Greenwood puts operators of boats under the same requirements as the operators of motor vehicles when the boat is involved in an accident.

This bill provides:

- that the operator of a vessel who has reason to believe that the operator may have been involved in an accident resulting in property damage or injury to or the death of a person shall:
  - immediately stop the vessel at the scene of the accident or as close to it as safely possible; and
  - remain at the scene of the accident until the operator has fulfilled certain requirements, including rendering aid as the operator is able and giving the operator's name, address and the identifying information on the vessel to anyone who is injured or whose property was damaged by the accident;
  - if the operator of a vessel has reason to believe the operator may have been involved in an accident only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the above;

The operator of a vessel whose vessel was involved in an accident and who fails to comply with the above is guilty of:

- a class B misdemeanor if the accident resulted only in damage to another vessel or other



- property;
- a class A misdemeanor if the accident resulted in injury to any person;
- a third degree felony with a fine of not less than \$750 if the accident results in serious bodily injury or death to any person.

**Amends:** 34 73-18-13

**Enacts:** 73-18-13.1, 73-18-13.2, 73-18-13.3

## PROHIBITION OF SALE OR USE OF CERTAIN SOFTWARE PROGRAMS

**HB 96**

**Rep. Patrice Arent**

First – What is it? (Defined at 76-6-1302)

“(1) Automated sales suppression device” means:

(a) a software program that falsifies the electronic records of electronic cash registers or any other point-of-sale systems, including transaction data and transaction reports; or

(b) a general reference to a device that allows for, creates, or supports an automated sales suppression system or any kind of phantomware.”

“(4) Phantomware” means a programming option that:

(a) is pre-installed, installed at a later time, or otherwise embedded in the operating system of an electronic cash register or hardwired into the electronic cash register; and

(b) can be used to create a virtual alternate register or to eliminate or manipulate transaction records that may or may not be preserved in digital formats in order to represent a manipulated record or records of transactions in the electronic cash register.”

Second, what’s the crime? (76-6-1303)

“(1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer, use, or possess in this state any automated sales suppression device or phantomware with the intent to defraud, except that any second or subsequent violation of this Subsection (1) is a second degree felony.”

(The law also subjects the software and the computer / register to forfeiture)

**Enacts:** 76-6-1302 and 1303

## RACKETEERING AMENDMENT

**HB 97**

**Rep. Jennifer Seelig**

This bill adds the offenses of human trafficking, 76-5-308; human smuggling, 76-5-309; and aggravated human trafficking, 76-5-310 to the list of offenses that, when conducted as a pattern of unlawful activity, constitute the offense of racketeering.

**Amends:** 76-10-1602

## **THEFT BY DECEPTION AMENDMENT**

**HB 103**

**Rep. Curtis Oda**

Modifies Theft by Deception statute to clarify that the deception and the taking do not have to occur simultaneously, but that they “may occur at separate times.” Also clarifies that the defense of mere “puffing” is only if the statements made are “unlikely to deceive an ordinary person.”

**AMENDS:** 76-6-405

## **LOCAL HIGHWAY AUTHORITY REGULATORY POWERS**

**HB 104**

**Rep. Wayne Harper**

This was the legislature’s response to Salt Lake City’s anti-idling ordinance. In the event any city council decides it wants to pass an anti-idling ordinance, its attorney needs to read this legislation.

The bill:

- Defines “ground transportation vehicles;
- Provides that a local highway authority may adopt an ordinance that requires a ground transportation vehicle to conform to state safety standards and reasonable annual appearance requirements, in consultation with a transportation advisory board of the local highway authority;
- Prohibits a local highway authority from enacting an ordinance that prohibits or restricts an owner or operator of a vehicle from causing or permitting the vehicle's engine to idle unless the ordinance meets certain requirements;
- Prohibits a local highway authority from enacting an ordinance that prohibits a vehicle from being licensed as a ground transportation vehicle:
  - based on the manufacture date of the motor vehicle or the number of miles the vehicle has accumulated; and
  - if the vehicle to be licensed otherwise passes all state safety inspection requirements established by the Utah Highway Patrol Division; and
- Provides that an ordinance enacted by a local highway authority that violates the provisions of the section is not effective.

**Amends:** 41-6a-208

## **OFFICIAL VOTER REGISTRATION AMENDMENTS**

**HB 105**

**Rep. Merlynn Newbold**

Requires County Clerks to remove deceased voters from the official register within 21 days of receipt of confirmation from the Utah Department of Health’s Bureau of Vital Records.

**Amends:** 20A-2-305.

## INTERNET GAMBLING

**HB 108**

**Rep. Stephen Sandstrom**

The aim of this bill is to reach into the mysterious inter-web and outlaw any form of gambling that might be done by (and to) the good people of Utah while immersed in that oh so tangled web. Here is the main language:

**76-101-1101:**

“(6) Internet gambling" or "online gambling" means gambling or gaming by use of:

(a) the Internet; or

(b) any mobile electronic device that allows access to data and information.”

**76-10-1102:**

(1) A person is guilty of gambling if ~~he~~ the person:

(a) participates in gambling, including any Internet or online gambling.

This general violation is a Class B misdemeanor. However:

(3) “(a) A person is guilty of a class A misdemeanor who intentionally provides or offers to provide any form of Internet or online gambling to any person in this state.

While there is an exception for internet service providers under this section, it appears that if a person knowingly offers a computer or cell phone to someone else to use for the purpose of accessing and using a gambling website, that would be a Class A misdemeanor.

**Amends:** 76-10-1101 & 1102

**Effective date:** July 1, 2012.

## MESSAGE THERAPY ACT AMENDMENTS

**HB 114**

**Rep. Tim Cosgrove**

This legislation is designed to prevent persons who claim to be seeking clients for “spiritual massage” or “rakke massage” or other forms of massage, but are in reality offering to be hired for sexual activity. The statute is changed to provide that any use of language of “providing, offering, or advertising a paid service using the term massage or a derivative of the word massage” to solicit business in Utah is regulated by the Utah Board of Massage Therapy, and must meet that Board’s standards.

**AMENDS:** 58-47b-102

## FIREARM MODIFICATIONS

**HB 117**

**Rep. Ken Ivory**

The only thing this bill does is change the term "sawed-off" to "short barrel" when the term is applied to shotguns and rifles. The definitions did not change so a “short barrel” shotgun or rifle

is exactly what a “sawed off” shotgun or rifle used to be.

In case you were wondering and had forgotten, “short barrel” means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

**Amends:** 76-10-501 and 76-10-504.

## **STORAGE OF ELECTRONIC RECORDS**

**HB 118**

**Rep. Bradley Daw**

This bill eliminates the provision from §77-23b-4 that have allowed access to electronic records which had been on a server longer than 180 days. A search warrant will now be required in all cases for the search and/or seizure of the contents of electronic records.

**Amends:** 77-23b-4 and 77-23b-6.

## **DISABLED LAW ENFORCEMENT OFFICER AMENDMENTS**

**HB 121**

**Rep. Lee Perry**

This bill provides that any law enforcement officer or state corrections officer who is injured, resulting in a total disability, is eligible to receive 100% of that officer’s regularly monthly salary and benefits until the age of 62 or until they are eligible for retirement, whichever occurs first. The injury:

- must have been sustained while in the lawful discharge of the officer’s duties;
- must have been the result of a criminal act upon the officer; or
- an aircraft, vehicle, or vessel accident; and
- the officer must not have been negligent in causing the injury.

**Amends:** 67-19-27.

## **DEFENSE OF PROPERTY AND PERSON**

**HB 129**

**Rep. Patrick Painter**

The vote on this bill came, by coincidence, just one or two days after a home owner in Provo had shot and killed a man who broke into his home, entered his bedroom and demanded that the home owner dress and go to an ATM with the burglar. The home owner went to the closet, ostensibly to get his pants, pulled a gun and shot the guy. The bill would have passed without the timing, but the incident was certainly raised during the short debate.

The bill clarifies that a person is justified in defending his or her home and family against

criminal activity and may not be held liable for civil damages for injury or damage occurring while acting in defense of home or family.

**Amends:** 78B-3-110

**Effective Date:** This bill became effective on March 15, 2012, upon being signed by the governor.

## **STATE SOVEREIGNTY AND RIGHTS OF SET-OFF**

**HB 141**

**Rep. LaVar Christensen**

This is one of several state/federal sovereignty enactments. The bill solemnly affirms Utah state sovereignty under the Ninth and Tenth Amendments of the U.S. Constitution, reserves all rights and powers under those amendments and affirms and reserves any set-off rights and claims Utah may have against the United States.

**Enacts:** 63G-15-101.

## **TRANSFER OF PUBLIC LANDS ACT**

**HB 148**

**Rep. Ken Ivory**

This is one of several state/federal sovereignty enactments. This bill requires the United States to surrender any title to public lands in Utah and transfer title to the state before 2015. When the state subsequently transfers title to those public lands, Utah retains 5% of the net proceeds and 95% is remitted to the federal government. Responsibility is vested in the Constitutional Defense Council (U.C.A. § 63C-4-101, 2011) to prepare proposed legislation creating a public lands commission to oversee acquired federal land, to extinguish U.S. title to public lands, to establish public land management procedures and to establish a process to subject those lands to taxation. Various bills and reports are due before September 2012. (Note that the legislature's general counsel has issued a cautionary opinion suggesting that the bill might be held unconstitutional.)

**Enacts:** 63L-6-101 through 63L-6-104.

## **CURRENCY AMENDMENTS**

**HB 157**

**Rep. Brad Galvez**

This bill defines "specie legal tender" to mean gold or silver coins issued by the United States or other gold or silver coins authorized either by Congress or a court decision. It provides that such coins are considered legal tender in Utah and prohibits a person from requiring payment in gold or silver coins except as expressly provided by contract. Capital gains tax and sales and use tax exemptions are provided.

**Amends:** 13-32a-103.5, 59-1-1501, 59-1-1502, 59-1-1503, 59-10-1028, 59-12-104 and

59-12-107.  
**Enacts:** 59-1-1501.1, 59-1-1505 and 59-1-1506.  
**Repeals:** 59-1-1504.

## **UNLAWFUL DETENTION AMENDMENTS**

### **HB 159**

**Rep. Ryan Wilcox**

A new crime is created by this legislation, making it a Class B misdemeanor to “exert influence over the victim to remain with the actor for a substantial period of time” if the victim is a mentally handicapped person or a person who is 14 or 15 years old, and this is without the consent of the parent or legal guardian of that person. The need for this addition to the law arose out of several episodes, including one in Weber County where a 26-year-old male took a 14-year-old girl with him and convinced her, over a period of an entire day, to have sexual intercourse with him.

**AMENDS:** 76-5-304

## **RIGHTS OF PARENTS AND CHILDREN**

### **HB 161**

**Rep. LaVar Christensen**

Creates an Interim Committee to study and make findings with the stated goal for the Division of Child and Family Services (DCFS) to consider whether it should “reduce the numbers of cases and costs associated with foster care.” Changes direct DCFS to seek permanent non-parental placement and termination of parental rights only as a “last resort.”

Creates a hierarchy as to how child placement should happen, in the following order:

1. In-home services to help the parent “correct the behavior that resulted in abuse, neglect or dependency;”
2. Seek extended family support or kinship placement;
3. Pursue foster placement.

The apparent intent of the bill is to fundamentally alter the way DCFS does business. Federal mandates which recognize the primacy of protecting children from abuse and neglect will be subordinated to leaving children with their parents and other relatives whenever possible, even if the parents are not making progress toward "reunification." The bill suggests that if federal law is in conflict with Utah's position on preserving families, federal law may be ignored (costing the state tens of millions of dollars - primarily from Medicaid 4e matching funds). The bill would make jury trials available in termination of parental rights cases. The bill intimates that appellate review of parental termination cases would be mandatory and possibly with a different standard of review than currently applies.

**Amends:** 33 62A-4a-201, 78A-6-503, 78A-6-507 and 78B-6-132.  
**Enacts:** 38 62A-4a-122, 63I-2-262 and 78A-4-201.

## VOTE BY MAIL AMENDMENTS

**HB 172**

**Rep. Steve Eliason**

An election officer is now authorized to conduct an election entirely by mail. Amendment also requires the lieutenant governor in consultation with other election officials to study required statutory changes and how to administer a vote by mail election by 2015. In such an election, all voters would have the option to mail in an absentee ballot or take it to an early voting or an election day center. Repeals section specific to voting by mail (absentee) in certain districts.

**Amends:** 20A-3-302 and 63I-2-220.

**Enacts:** 20A-5-410.

**Repeals:** 20A-3-302.5.

## TRANSPORTATION FUNDING MODIFICATIONS

**HB 173**

**Rep. Brad L. Dee**

The bill provides that county option sales and use tax revenues for transportation may be used for a project that is a collector road in a county of the second class if the road relates to a regionally significant transportation facility, is for new capacity or congestion mitigation, and is on a priority list.

The bill reduces the amount of bonds that may be issued under Section 63B-18-401. The proceeds of bonds that are issued under this statute are earmarked for additional road projects. Before receiving these proceeds, the city or county must certify that proceeds will be used for the these additional projects and a statement of cash flows showing the estimated costs for these additional projects for the next year. At the close of these additional projects, the city or county shall provide to UDOT an accounting of expenditure of funds. UDOT manages cash flow for and timing of these additional road projects. General obligation bonds may not be issued in 2012 or 2013 to finance these additional projects.

The debt service and bond issuance costs for certain bonds that have been issued shall be paid by the Transportation Investment Fund of 2005 and the County of the First Class State Highways Fund.

**Amends:** 59-12-2217, 63B-18-401, 72-2-121, 72-2-121.3 and 72-2-124.

## SECOND HAND ITEM TRANSACTIONS

**HB 175**

**Rep. Jennifer Seelig**

There were a lot of "*Pawn Stars*" involved in this bill. Alex Goble, Scott Fisher, Zachary Fountain, Scott Atkinson, Michael Millard, and many, many more, met with lobbyists, drafted, and re-drafted over many months to get us to this point. The bill does many things in the world of pawn and second hand store regulation, investigation, and prosecution.

The primary concern was to address re-victimization of original victims by pawn shops. If Grandma's unique ring was stolen, was reported to police, and later discovered at a pawn shop and positively identified, some pawn shops would still charge the original victim to recover their stolen property, even when the pawnshop knew it was a legitimate victim willing to cooperate in a prosecution. That problem, and others, are now addressed.

"Original victim" means a victim who is not a party to the pawn or sale transaction and includes:

- (a) an authorized representative designated in writing by the original victim; and
- (b) an insurer who has indemnified the original victim for the loss of the described property.

***Investigation stage changes:***

**13-32A-115:**

(1) If the property pawned or sold to a pawn or secondhand business is the subject of a criminal investigation and a hold has been placed on the property under Section 13-32a-109, the original victim shall do the following to establish a claim:

- (a) positively identify to law enforcement the item stolen or lost;
- (b) if a police report has not already been filed for the original theft or loss of property, file a police report, and provide for the law enforcement agency information surrounding the original theft or loss of property; and
- (c) give a sworn statement under penalty of law that:
  - (i) claims ownership of the property;
  - (ii) references the original theft or loss; and
  - (iii) identifies the perpetrator if known (Sort of an 1102 statement)

- The pawn shop keeps the property with the hold placed until prosecution begins unless it is truly needed for investigative reasons, or there is an agreement to return it to the original owner.
- Upon commencement of prosecution, the property *may* be seized by law enforcement, and subsequent disposition will be in keeping with the no longer needed as evidence statute, and the new pawn chapter.

***Property disposition hearings:***

**If there is an ongoing prosecution**

**13-32A-116:**

- First, prosecutor determines property is no longer needed as evidence.
- If not needed, prosecutor informs the pawn shop, agency, and original victim.
- Then, "the original victim and the pawn or secondhand business from which the property was seized may choose to resolve the matter pursuant to Subsection 13-32a-115(2)(b) within 10 days of notice being given that the property is no longer needed." (An agreement they choose)."
- If the pawn shop and original victim cannot come to an agreement, then the prosecutor will file a motion to the court to have an informal property disposition hearing, which can be combined with a preliminary hearing or any other hearing. The prosecutor gives notice of the hearing.
- "(4) At the seized property disposition hearing the court shall take into consideration:
  - (a) the evidentiary value of the property and the need for its use at trial;



- (b) whether alternative evidence, such as photographs, records, or serial numbers, make retention of the property unnecessary;
- (c) the proof of ownership of the property and compliance with Subsection 13-32a-115(1) by the original victim;
- (d) whether retention of the property would create any undue hardship to the original victim; and
- (e) compliance by the pawn or secondhand business with the requirements of this chapter, and potential financial loss to the business if the property were returned to the original victim.
- (5) Upon conclusion of the property disposition hearing the court may:
  - (a) order the return of the evidence to the original victim or to the pawn or secondhand business as it determines appropriate; and
  - (b) make an initial finding of restitution for the original victim or the pawn or secondhand business pending resolution of the criminal case.”

**If there is no ongoing prosecution**

**13-32A-117:**

- If more than 30 days have gone by since the original owner locates the property and makes a valid claim to it, but no prosecution is ongoing (defendant a fugitive or unknown) - then this section applies.
- Essentially, all of the same steps as in the hearing above, except the prosecutor and law enforcement is not involved in the hearing itself.
- Instead, after the prosecutor determines the item is no longer needed as evidence, the original victim or pawn shop “may request an administrative property disposition hearing with the Division of Consumer Protection”
- The Division of Consumer Protection would then schedule an administrative hearing where the victim can establish that they are the rightful owner.

***Regulation changes:***

**13-32A-102.5 - Administration & Enforcement**

- “Municipal and county law enforcement agencies, prosecutorial agencies, and governmental agencies may enforce the criminal and civil provisions of this chapter.”

**13-32A-104 - Register required to be maintained.**

- The requirements of this section remain (keep a register of all articles).
- Importantly, it is now a Class B misdemeanor for a person to violate any part of the section.
- Added new language that a person may not pawn or sell an item that is otherwise “subject to being turned over to a law enforcement agency in accordance with Title 77, Chapter 24, Unclaimed Personal Property.”
- Likewise, the “employee or owner” of the pawn shop may not accept such property.

**13-32A-106 - Transaction information provided to database.**

- The requirements of this section are unchanged. A violation of this section (failure to maintain pawn tickets, or timely provide information to database etc.) is now a Class B misdemeanor.

### **13-32A-108 - Retention of Records - Reasonable Inspection.**

- The requirements are the same (retain tickets for at least 3 years, law enforcement to inspect only during business hours) but a violation of the section is a Class B Misdemeanor.

### **13-32A-109 - Holding Period for Articles.**

- The requirements are the same (article subject to hold to remain in custody, requirement to notify pawn shop when hold not necessary) but a violation of the section is a Class B Misdemeanor.

### **13-32A-110.5 - Transactions with certain persons prohibited. (NEW)**

- A pawn or secondhand business may not purchase, accept as a pawn, or take for consignment any property from a person who:
  - (1) is younger than 18 years of age; or
  - (2) appears to be acting under the influence of alcohol or any controlled substance.

### **Finally...**

### **13-32A-112 - Pawn Advisory Board**

- Adds a municipal prosecutor.
- Adds new sections:
  - (8) The board may propose to the division administrative rules establishing:
    - (a) pawn and secondhand business industry standards for best practices;
    - (b) standardized property descriptions for the database created under this chapter; and
    - (c) a roster of software programs for pawn and secondhand businesses setting out minimum basic requirements for functionality.
  - (9) Pawn and secondhand businesses may file with the board complaints regarding law enforcement agency practices perceived to be inconsistent with this chapter. The board may refer the complaints to the Peace Officers Standards and Training Division.

The intent of this language is to address some of the problems regarding consistency in property descriptions, database input, etc., by implementing best practices mutually agreed upon in rule, and to give the pawn and secondhand businesses a voice in registering complaints when law enforcement does not follow the requirements of the chapter.

**Amends:** 13-32A-102 through 13-32A-112.5 and 77-24-2

**Enacts:** 13-32A-110.5 and 13-32A-115 through 13-32A-117

**Repeals:** 13-32A-109.8 and 13-32A-106.5

## **COUNTY LAND USE PLANS**

### **HB 176**

**Rep. Michael Noel**

This is one of several state/federal sovereignty enactments. This bill establishes a process by which a county may make a recommendation to the Utah Legislature about any congressional proposal regarding federal land use within that county. The county may prepare a report and other materials regarding the proposed congressional initiative and file it with the Public Lands Policy Coordinating Office; that office evaluates the report and submits it for evaluation and review by the

appropriate subcommittee of the Utah Legislature. Based on the subcommittee report, the legislature may then act on the county's proposal and determine whether to forward it to Congress.

**Amends:** 63J-8-102 and 63J-8-105.  
**Enacts:** 63J-8-107.  
**Repeals and Reenacts:** 63J-8-106.

## **SIGNS HONORING FALLEN HIGHWAY PATROL TROOPERS**

**HB 182**

**Rep. Brad Wilson**

Authorizes UDOT to erect memorial signs along state highways honoring fallen Utah Highway Patrol troopers who have been killed in the line of duty. Requires the signs be located in the community of the fallen trooper that the memorial is intended to honor.

**Enacts:** 72-7-110.

## **AGRICULTURAL OPERATION INTERFERENCE**

**HB 187**

**Rep. John Mathis**

Farm espionage runs rampant in Utah. This bill addresses the rather unique problem.

Creates New Section 76-6-112:

Defines "agricultural operation" to mean "private property used for the production of livestock, poultry, livestock products, or poultry products." It then creates new criminal elements punishable as either a Class A or Class B Misdemeanor, depending on the scenario (some of which are quite comical in a Monte Python mind):

CLASS A:

2) A person is guilty of agricultural operation interference if the person:

(a) without consent from the owner of the agricultural operation, or the owner's agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation.

CLASS B:

A person is guilty of agricultural operation interference if the person:

(b) obtains access to an agricultural operation under false pretenses;

(c) (i) applies for employment at an agricultural operation with the intent to record an image of, or sound from, the agricultural operation;

(ii) knows, at the time that the person accepts employment at the agricultural operation, that the owner of the agricultural operation prohibits the employee from recording an image of, or sound from, the agricultural operation; and

(iii) while employed at, and while present on, the agricultural operation,

records an image of, or sound from, the agricultural operation; or  
(d) without consent from the owner of the operation or the owner's agent, knowingly  
or intentionally records an image of, or sound from, an agricultural operation while  
the person is committing criminal trespass, as described in Section 76-6-206, on the  
agricultural operation.

**Enacts:** 77-10-1101

## **REAL ESTATE AMENDMENTS**

**HB 191**

**Rep. Gage Froerer**

### **Timeshare and Camp Resort Projects**

Amends the definition of “Developer” to include those who engage one or more person to do developer activities on his behalf. Amends the statute to allow a timeshare developer to accept a reservation and deposit from a prospective purchaser under certain circumstances prior to having the timeshare project registered with the Division of Real Estate. Amends the time period for the purchaser to cancel from calendar days to business days and allows the Division of Real Estate to deny, suspend, or revoke a registration application if a purchaser’s name, address, or e-mail is disclosed to an unaffiliated entity without written consent from the purchaser.

### **Utah Residential Mortgage Practices and Licensing Act**

Amends the act to differentiate between a lending manager, a branch lending manager, and a principal lending manager. The principal lending manager must be sponsored by a qualifying entity and identified as such by the sponsoring entity in the nationwide database. Prohibits a lending manager from acting as both the principal lending manager and the branch lending manager if the entity operates more than one office within Utah. Defines and prohibits giving a referral fee for residential mortgage loan business. Requires the Division of Real Estate to determine whether an applicant with a criminal history qualifies for licensure, but also provides for de novo review by the Residential Mortgage Regulatory Commission for denial of a license. Amends the act to also require a licensee to disclose a plea in abeyance for a felony or a misdemeanor involving certain acts of dishonesty or financial malfeasance. Requires a licensed entity to create a quarterly report regarding lending activities that must be submitted to the nationwide database.

### **Appraisal Management Company Registration and Regulation Act**

Amends the act to exempt an appraisal management company that is owned and controlled by federally regulated financial institution. Repeals the exemption for appraisal management companies that contracts for fewer than 10 appraisals per calendar year. Requires appraisal management companies to file a certificate evidencing a surety bond for at least \$25,000. Amends the act to relocate many acts that were previously listed as examples of violations by an appraiser to specifically prohibit those acts. Provides authority for the Division of Real Estate to issue a cease and desist order if the person is violating the act.

### **Real Estate Licensing and Practices Act**

Requires the Division of Real Estate to determine whether an applicant with a criminal history qualifies for licensure, but provides de novo review of any denial. Amends the act to also

require a licensee to disclose a plea in abeyance for a felony or a misdemeanor involving certain acts of dishonesty or financial malfeasance. Repeals certain aspects relating to foreclosure rescue services.

### **Real Estate Appraiser Licensing and Certification Act**

Amends the act to require a licensee to disclose a plea in abeyance for a felony or a misdemeanor involving certain acts of dishonesty or financial malfeasance. Prohibits a licensed appraiser who also holds a license under the Real Estate Licensing and Practices Act or the Utah Residential Mortgage Practices and Licensing Act from acting under more than one license in a single transaction. Repeals Utah Code 61-2g-303, which provided that an expert could receive approval from the Division of Real Estate to participate in administrative or judicial tax proceedings without a license.

**Amends:** 57-8-2, 57-8-27, 57-19-2, 57-19-6, 57-19-8, 57-19-12, 57-19-13, 57-19-26, 61-2c-102, 61-2c-102, 61-2c-106, 61-2c-203, 61-2c-204.1, 61-2c-205, 61-2c-206, 61-2c-209, 61-2c-301, 61-2c-302, 61-2c-404, 61-2e-104, 61-2e-201, 61-2e-204, 61-2e-307, 61-2e-401, 61-2f-102, 61-2f-203, 61-2f-301, 61-2f-401, 61-2g-103, 61-2g-201, 61-2g-301, 61-2g-304, 61-2g-306, 61-2g-308, 61-2g-312, 61-2g-315, 61-2g-402, 61-2g-403, 61-2g-502 and 61-2g-503.

**Repeals:** 61-2g-303.

**Effective Date:** May 8, 2012; except the amendments to 61-2f-401 and 61-2g-103, both of which take effect on July 1, 2012.

## **INVOLUNTARY FEEDING AND HYDRATION OF INMATES**

**HB 194**

**Rep. Derek Brown**

This bill enacts a new chapter in the Code of Criminal Procedure establishing a hearing process which permits judicial intervention when a correctional facility's inmate is endangered by a hunger strike. The statute applies to both state prison and county jail inmates. It provides that if it appears that a prisoner is likely to suffer severe harm or death by refusing to accept sufficient nutrition or hydration, a mental health therapist conducts an evaluation of the prisoner; an expedited hearing in district court may follow. The district court convenes a hearing within two business days and confidentially reviews the prisoner's medical and mental health records, receives testimony or evidence, and makes a finding which may include a court order requiring the involuntary feeding or hydration of the inmate. If the inmate is represented by an attorney, notice of the hearing is sent to the attorney and the prisoner has the right to attend and participate in the proceeding. If involuntary feeding or hydration is ordered, it is conducted under immediate medical supervision and the court retains continuing jurisdiction to review the prisoner's condition.

**Enacts:** 77-16b-101 through 77-16b-105.

## GROWING OF FOOD

**HB 198**

**Rep. Christopher Herrod**

There has to be a story behind this bill. In keeping with the theme of the 2012 legislative session, this is another “government, keep your dirty, meddling hands out of my business” bill. The bill enacts new §4-1-9 in the Agricultural Code and is short enough to include in its entirety.

### **4-1-9. Growing or storing food for personal or family use.**

(1) As used in this section, "family food" means food owned by an individual that is intended for the individual's consumption, or for consumption by members of the individual's immediate family, that:

- (a) is legal for human consumption;
- (b) is lawfully possessed; and
- (c) poses no risk:
  - (i) to health;
  - (ii) of spreading insect infestation; or
  - (iii) of spreading agricultural disease.

(2) Family food that is grown by an individual on the individual's property is not subject to local or federal regulation if growth of the family food:

- (a) does not negatively impact the rights of adjoining property owners; and
- (b) complies with the food safety requirements of this title.

(3) A government entity may not confiscate family food described in Subsection (2) or family food that is stored by the owner in the owner's home or dwelling.

(4) If any provision of this section or the application of any provision of this section to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this section shall be given effect without the invalid provision or application. The provisions of this section are severable.

Attorneys for cities and counties should note the provision in subparagraph (2) which limits local governmental regulation of food grown by an individual on his own property for his and his immediate family’s consumption.

The severability clause in subparagraph (4) is presumably included to address the likelihood that a federal court may take umbrage at the provision in subsection (2) which purports to tell the feds what is or is not within their purview.

**Enacts:** 4-1-9

## **POLITICAL SUBDIVISION RESIDENTIAL RENTAL AMENDMENTS (Good Landlord Programs)**

**HB 216**

**Rep. Kenneth Sumsion**

The good landlord programs that have been operated by several municipalities have had very positive results. Municipalities were able to off-set the impacts of rental units that were placing a significant demand upon municipal resources. Due to some unsubstantiated rumors this bill’s first

intent was to eviscerate those good landlord programs.

The resulting legislation has exemptions for a landlord that also resides within a four-plex or smaller multi-family unit, exempts landlords that are designated professional property managers, or those that have completed a live good landlord training program by any other municipality. Each municipality may still require that landlords be familiar with that municipality's regulations and processes. The municipality's ability to collect "disproportionate" fees has remained, and the basis for collecting those fees has been expanded.

**Amends:** 10-1-203, 10-8-85.5, 10-9a-511, 57-22-7 and 72-7-102.

**Enacts:** 10-1-03.5.

## **RETENTION OF EVIDENCE**

### **HB 223**

**Rep. Brad Wilson**

It was suggested by Jeff Hall and Alicia Cook in the Salt Lake County District Attorney's Office that there needed to be a requirement for peace officers agencies to retain interviews of minor children for a longer period of time. There are several reasons for this of course - one being that under Rule 404c prior bad acts might be relevant for some time to come if the perpetrator subsequently commits another crime against a child. Additionally it is not uncommon for people to file suit for abuse which took place many years ago and the interview tapes should be retained for that purpose. Jeff's original suggestion was retain the recordings for 15 years this was amended in committee to 18 years.

**Amends:** 77-24-2

## **CONSTABLES AMENDMENTS**

### **HB 229**

**Rep. Lee Perry**

This bill:

- prohibits a county from contracting with a constable for a period that exceeds four years and limits a constable's appointed term to four years;
- requires a constable, while undertaking his or her official duties,
  - to verbally communicate to the person being served that the constable is a constable; and
  - print on the first page of each document served:
    - the constable's name and identification as a constable;
    - the county or municipality for which the constable is appointed; and
    - a business phone number for the constable.
  - If a constable wears a uniform, the uniform shall be clearly marked with the word "constable" on the uniform shirt and, if applicable, the jacket.;
- Constables serving process outside the county in which they are appointed shall contact the sheriff's office or police department of the jurisdiction prior to serving executions or seizing any property.

- A constable or deputy constable shall notify the local sheriff's office or police department before serving a warrant of arrest.

**Amends:** 17-25-5, 17-25-6 and 17-25a-3.

## **ABUSE, NEGLECT AND DIVISION DEFINITIONS**

**HB 232**

**Rep. Christine Watkins**

This change eliminates the requirement that the Division of Child and Family Services do court-ordered evaluations for juvenile and district courts for child custody issues.

The existing definition of neglect of a child under Utah law was expanded to include “action or inaction” causing that neglect.

**Amends:** 62a-4A-105 and 78A-6-105

## **POLITICAL PARTY REGISTRATION AMENDMENTS**

**HB 233**

**Rep. Jim Nielson**

This bill allows political parties to use either of the last *two* general elections to calculate party participation in order to qualify as a continuing political party.

**Amends:** 20A-8-101 and 20A-8-102.

## **PAWNSHOP RECORD AMENDMENTS**

**HB 239**

**Rep. Richard Greenwood**

Simple bill. While pawn database records are protected records, this bill allows law enforcement to respond to inquiries from insurance companies.

“These records may be used only by law enforcement officials and the division and only for the law enforcement and administrative enforcement purposes of: . . .

(c) responding to an inquiry from a person claiming ownership of described property or an insurance company investigating a claim for physical loss of described property by searching the database to determine if property matching the description has been delivered to a pawnbroker or secondhand business by another person in a pawn or purchase transaction.”

**Amends:** 13-32A-106.5



## MUNICIPAL ELECTION REVISION

**HB 243**

**Rep. John Dougall**

This bill removes the provisions providing for the selection candidates from municipal office through the convention process. Candidates from municipal offices may simply make application or be nominated without the convention process.

**Amends:** 20A-9-203.

## AMENDMENT TO DEFINITION OF SMOKING IN UTAH INDOOR CLEAN AIR ACT

**HB 245**

**Rep. Bradley Last**

This bill:

- Amends the definition of smoking to include e-cigarettes and heated tobacco products;
- Defines e-cigarette;
- Phases in the application of the amended definition of smoking as it applies to the use of e-cigarettes in a retail establishment that sells e-cigarettes;
- Phases in the application of the definition of smoking as it applies to certain places of public access that allow the use of a hookah; and
- Sunsets the phase in of the application of the amended definition of smoking on July 1, 2017.

Attorneys for counties and cities should note that to bill presumes the involvement of local health departments in the licensing, regulation and inspection of hookah bars and merchants who are allowed to sell e-cigarettes. It provides that local health departments may charge a fee to cover the costs of such licensing, regulation and inspection.

**Amends:** 29 26-38-2, 26-38-7 and 63I-1-226.

**Enacts:** 26-38-2.5 and 26-38-2.6.

**Sunsets:** 26-38-2.5 and 26-28 (should be 38)- 2.6 on July 1, 2017.

## SINGLE FAMILY ZONING DESIGNATION

**HB 249**

**Rep. Dean Sanpei**

This bill:

- Amends the definition of "single-family limit" to provide that "single-family limit" means the number of unrelated individuals allowed to occupy [a] each residential unit that is recognized by a land use authority in a zone permitting occupancy by a single family.; and
- Allows a local government or a potentially aggrieved person to request an advisory opinion from a neutral third party as provided for in §13-43-206 regarding compliance with provisions related to a single family designation.

**Amends:** 22 10-9a-505.5, 13-43-205 and 17-27a-505.5.

## **PEACE OFFICER STANDARDS TRAINING AMENDMENTS**

**HB 252**

**Rep. Richard Greenwood**

Eliminates the requirement that one member of the seventeen member POST Council be an officer of the Federal Bureau of Investigation and increases the at-large membership from three to four to maintain the overall membership of the Council at seventeen. Provides that the requirement to complete the basic peace officer training course may be waived for an applicant who completed it within the previous four years or who was actively engaged in performing peace officer duties for the previous four years. Deletes the requirement that an applicant not be restricted from possessing a firearm under section 76-10-503 or federal law.

**Amends:** 53-6-106 and 53-6-206.

## **VOTER REGISTRATION AMENDMENTS**

**HB 253**

**Rep. Kraig Powell**

County clerks are now required to send an address verification notice with a return service request to every registered voter who has failed to vote in any two consecutive general elections and to whom the county clerk has not sent a notice under 20A-2-306. The discretion was removed from county clerks in regards to voter registration rolls. County clerks are now required to remove voters from the list of registered voters if the voter fails to respond to a notice under 20A-2-306 as provided by the section; if the county clerk has notice that of a registered voter who has been convicted and whose voting rights have not been restored; or if the county clerk has notice that a registered voter has since registered in another state.

**Amends:** 20A-2-304.5 and 20A-2-305.

## **CONTROLLED SUBSTANCES AMENDMENTS**

**HB 254**

**Rep. Gage Froerer**

Amends the definition of “controlled substance analog” to include any substance which has a stimulant, depressant, or hallucinogenic effect on the central nervous system similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system as the substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal controlled substances Act, Title II, P.L., 91-513; or is represented or intended to have such an effect on the central nervous system. Adds benzylpiperazine (“BZP”) to Schedule I (BZP has effects comparable to amphetamines). Adds the following four synthetic cannabinoids to the list of controlled substances in section 58-37-4.2: AM-2201; JWH-203; JWH-210; RCS-4; and adds fluoromethcathinone (stimulant related to amphetamine and other classes) to that list.

**Amends:** 58-37-2, 58-37-4 and 58-37-4.2.

## RETIREMENT MODIFICATIONS

**HB 256**

**Rep. Don Ipson**

This fairly lengthy bill makes a number of what appear to be house keeping and technical modifications to the Utah State Retirement and Insurance Benefit Act. UPEA tracked the bill but took no position on it, so it probably makes few if any substantive changes. If you are interested or worried, take a look at the long title below. If anything jumps out at you and you want more information, contact the retirement specialist in your agency, the Utah State Retirement Office or UPEA.

This bill:

- amends definitions;
- provides that "initially entering" employment includes employees that move from a position not covered under a Utah Retirement System to a position that is covered;
- clarifies post retirement employment provisions for a retiree who returns to work within one year or who elects to earn additional service credit;
- provides that a domestic relations court order must be received within 12 months of the death of the member;
- repeals language related to presentment by a policyholder;
- amends the definition of regular full-time employee to provide that the minimum earnings required for an elective or appointive officer to be eligible for a retirement benefit under the Tier I Public Employees' Systems is based on a monthly rate, not just the first month in office;
- clarifies that an employer must be a participating employer whether or not the employer has applied for admission to the system;
- allows the executive director of the Department of Corrections to be excluded from the Public Safety Contributory Retirement System, the Public Safety Noncontributory Retirement System, and the Tier I Public Safety Noncontributory Retirement System;
- clarifies that only Tier II governors and legislators and their spouses, not all Tier II public employees, may be eligible for the governors' and legislative paid-up group health coverage;
- clarifies that Tier II firefighters, including volunteer firefighters, are covered under the URS long-term disability program;
- provides that long-term disability claims must be made within six months, rather than one year, from the employee's date of disability;
- requires an employee receiving monthly disability benefits to provide certain information and documentation requested by the office;
- provides that monthly disability benefits are reduced for payments made for sick leave, annual leave, or similar payments;
- clarifies participation requirements for employers in the Tier II systems;
- allows certain at-will employees to be exempt from the vesting requirement for the defined contribution plan in the Tier II Public Employees' Retirement System;
- allows certain public safety service employees to be exempt from the vesting requirement for the defined contribution plan in the New Public Safety and Firefighter Tier II Contributory Retirement System;
- clarifies who a participating employer must cover under the Tier II Public Safety and Firefighters Systems; and

- makes technical changes.

**Amends:** 56 49-11-102, 49-11-505, 49-11-612, 49-11-616, 49-12-102, 49-13-102, 49-13-202, 49-14-203, 49-15-203, 49-20-404, 49-21-201, 49-21-401, 49-21-402, 49-22-202, 49-22-401, 49-23-202, 49-23-401, 49-23-601.

## **CONTROLLED SUBSTANCE DATABASE AMENDMENTS**

**HB 257**

**Rep. Bradley Daw**

This bill provides that information from other state and federal prescription monitoring agencies is now available in the database. Provides for the designation by a practitioner of persons employed by the same business as the practitioner to gain access to the controlled substance database at the request of the practitioner, and provides for emergency room employees to look up information for a practitioner who is treating an emergency room patient. It is a third degree felony to for an unauthorized person to attempt to obtain or actually obtain information in the database. Unauthorized release of information in the database is a third degree felony and is also subject to a civil penalty of up to \$5,000 for each separate violation.

Amends: 58-37f-301 and 58-37f-601.

## **MUNICIPAL ADMINISTRATIVE PROCEEDINGS AMENDMENTS**

**HB 259**

**Rep. Kraig Powell**

Short and sweet.

### **10-3-703.7. Administrative proceedings.**

(1) A municipality may adopt an ordinance establishing an administrative proceeding to review and decide a violation of a civil municipal ordinance.

(2) An ordinance adopted in accordance with Subsection (1) shall provide due process for parties participating in the administrative proceeding.

**Repeals and Reenacts:** 10-3-703.7

## **DRIVER LICENSE AMENDMENTS**

**HB 268**

**Rep. Val Peterson**

This bill provides that a regular driver license certificate and any endorsement thereto held by a person stationed outside the state that expires while the person is outside the state, is valid until 90 days after the person's orders have been terminated or the person has been discharged, or the person's assignment has been changed or terminated. This applies to persons ordered to active duty and stationed outside of Utah in any of the armed forces of the United States and their immediate family member or dependents residing outside of Utah; and to civilian employees of the United

States State Department or the United States Department of Defense who is stationed outside of the United States and their immediate family members or dependents residing outside of Utah.

**Amends:** 53-3-205.

**Effective date:** July 1, 2012

## **MUNICIPAL and COUNTY DEVELOPMENT STANDARDS**

**HB 273**

**Rep. Brad Wilson**

This legislation is a compromised version of an attempt by the development community to require that all infrastructure requirements be standardized state wide. Their intent was to avoid the surprise of new standards (diameter of pipes, thickness of asphalt, etc.) after they had received project approval assuming prior standards. After receiving push back from the governmental entities, the parties compromised with this legislation requiring a special noticing provision to those requesting the special notice, if any changes to the standards are proposed. Also, language that prevents new standards from being imposed to previously approved developments.

**Amends:** 10-9a-509 and 17-27a-508.

**Enacts:** 10-9a-212.

## **AIDING SEXUAL SOLICITATION**

**HB 276**

**Rep. Paul Ray**

Prohibited conduct has been expanded under the new statutory language. Old law prohibited only soliciting persons to patronize a prostitute; procuring a prostitute for a person; and permitting a place to be used for prostitution. Now also prohibited is “any service or act which enables another person to commit [prostitution].”

**Amends:** 76-10-1304

## **GRAFFITI PARAPHERNALIA**

**HB 277**

**Rep. Jim Nielson**

This bill:

- modifies the definition of graffiti to include etching; and
- defines etching as “defacing, damaging, or destroying hard surfaces by means of a chemical action which uses any caustic cream, gel, liquid, or solution.”

**Amends:** 76-6-107.

## **CRIMINAL OFFENSE AMENDMENTS**

**HB 282**

**Rep. Paul Ray**

The first purpose of this bill is to separate into individual code sections lewdness 76-9-702, sexual battery now in 76-9-702.1 and public urination now in section 76-9-702.3. Up to now these three offenses have been in the same section which has caused all manner of confusion and errors. Of course changing section numbers will cause some short term confusion but hopefully it will all work better in the long run.

The second feature of the bill was suggested by Ryan Robinson. A plea in abeyance to lewdness will now count as the equivalent of a conviction for the purposes of enhancement to a third degree felony under that section. It is not terribly unusual to give a plea in abeyance to a young person charged with lewdness in a fraternity type setting, but if the person re-offends that plea in abeyance should count as a prior. The plea in abeyance also counts as a prior conviction for purposes of the sex offender registry. A plea in abeyance to sexual battery is also counted as a prior conviction for purposes of the sex offender registry. There is no penalty enhancement for multiple offenses of sexual battery. Additionally there is no reason to give a plea in abeyance very often in sexual battery cases as they are of a considerably different nature than a simple lewdness charge.

**Amends:** 31a-21-501, 76-6-202, 76-9-702 and 77-27-21.5.

## **HIGHWAY BARRICADE AMENDMENTS**

**HB 297**

**Rep. Lee Perry**

The subsection now reads: "A person who willfully fails to observe any temporary or permanent barricade, warning light, sign, cone, or other object used in accordance with this section, or to obey a flag man, is guilty of a class B misdemeanor." The amendment came about because a defendant argued that since cones were not listed specifically in the statute he did not need to obey them.

**Amends:** 72-6-114.

## **MOTOR VEHICLE SAFETY INSPECTION AMENDMENTS**

**HB 298**

**Rep. John Dougall**

Provides that if title to a used motor vehicle is being transferred, a safety inspection certificate issued for the motor vehicle during the previous eleven months may be used to register the vehicle (formerly it was two months). Regarding safety inspections: for a vehicle that is ten years old or older on January 1 as determined by the model year identified by the manufacturer, a safety inspection shall be required each year; for a vehicle that is less than ten years old on January 1 as determined by the model year identified by the manufacturer, a safety inspection shall be required in the fourth and eighth year. This bill coordinates with HB 407.

**Amends:** 41-1a-205, 41-1a-1201, 41-1a-1206, 41-3-303, 53-3-106, 53-8-204, 53-8-205 and 53-8-206.

**Effective date:** The amendments to 53-3-106 take effect on July 1, 2012.  
The amendments to the following sections take effect on January 1, 2013: 41-1a-205, 41-1a-1201, 41-1a-1206, 41-3-303, 53-8-204, 53-8-205 and 53-8-206.

## **LAND USE PENALTIES**

### **HB 302**

**Rep. Michael Morely**

This is a code enforcement bill that requires notice of code violations be delivered to the owner of the property (not just occupant) and that the owner be given the opportunity to cure before a civil notice of violation or citation is issued. This attempts to avoid the daily fines imposed on owners of property who have no knowledge of the violation because notices have been given to the occupant or posted on the property.

**Amends:** 10-9a-803 and 17-27a-803.

## **CONSTRUCTION CODE REVISIONS**

### **HB 305**

**Rep. Gage Froerer**

County and city attorney offices should make sure their engineer and building inspection departments are aware of this bill. It:

- Modifies a provision requiring an engineer evaluation of certain buildings built before 1975;
- Temporarily eliminates a requirement that the evaluation occur when the building is undergoing re-roofing or an alteration of or repair to certain features; and
- Replaces that requirement with a temporary requirement that the evaluation occur when the building is undergoing structural alterations or repairs, and specifies what is not included in structural alterations or repairs.

**Amends:** 15A-3-113

## **FACTUAL INNOCENCE AMENDMENTS**

### **HB 307**

**Rep. Brad Dee**

The statute was once again taken in for its bi-annual tune-up. This time the issues were mostly procedural, focusing on the role of the judge and how he/she reaches the final determination. The legislature also clarified that unless the parties stipulate to the finding of factual innocence, a hearing is required. This aspect was implicit in the former language, but is now expressly provided. Petitions filed after the death of petitioner will not be eligible for compensation, and compensation awards cease upon the death of petitioner.

**Amends:** 78B-9-402, 78B-9-404 and 78B-9-405.

## **TRAFFIC SAFETY AMENDMENTS**

**HB 317**

**Rep. Don Ipson**

Amends the traffic school provision in this section. The section itself requires drivers, when approaching a stationary emergency vehicle with lights flashing, to reduce speed and provide as much space as practical to the stationary emergency vehicle, and if traveling in a lane adjacent to the stationary emergency vehicle, make a lane change into a lane not adjacent to the stationary emergency vehicle if practical. In addition to any other penalties for violating this section, a driver shall attend a four hour live classroom course approved by a court or the driver license division (not the National Safety Council). Failing to complete that course within 90 days of conviction results in a 90-day suspension, though completion of that course shortens the suspension period effective immediately upon proof of course completion.

**Amends:** 41-6a-904.

## **SALES AND USE TAX COLLECTION AMENDMENTS**

**HB 323**

**Rep. David Butterfield**

Amends the timing and remittance of sales and use taxes for a purchaser that converts tangible personal property into real property. Also amends the computation of tax for a sale that includes the delivery or installation of tangible personal property at a location other than a seller's place of business. The bill further amends the act to address a deduction for bad debt on sales of tangible personal property converted into real property.

**Amends:** 59-12-107.

## **SERIOUS YOUTH OFFENDER AMENDMENTS**

**HB 326**

**Rep. Paul Ray**

A couple of years ago aggravated assault 76-5-103 was amended to remove the requirement of intentionally causing serious bodily injury to amount to a 2<sup>nd</sup> degree felony. Since that time it has only been necessary to show that the person committed aggravated assault and that serious bodily injury resulted.

In making that change there was no adjustment to 78a-6-702 serious youth offender regarding assault. That section still had the requirement of intentionally causing serious bodily injury. This bill changes that to "resulting in" serious bodily injury to another.

**Amends:** 78a-6-701



## **ELECTION BALLOT AMENDMENTS**

**HB 339**

**Rep. Steve Eliason**

If an election is held solely by absentee ballot without a polling location, the election officer is required to include a “business reply envelope” defined as a return envelope with the postage pre-paid. Election officers are required to lock up returned absentee ballots until they are delivered to the election judges. If an absentee ballot is rejected, the election officer shall notify the voter and state the reasons for the rejection within 7 days of the election if the ballot is received on or before election day or within 7 days of the canvass if the ballot is received after the election but before the end of the canvass. The number of rejected ballots is to be added to the canvassers’ report.

**Amends:** 20A-1-102, 20A-3-302, 20A-3-302.5, 20A-3-305, 20A-3-306, 20A-3-307, 20A-3-308 and 20A-4-304.

## **AMENDMENTS REGARDING COMPETENCY TO STAND TRIAL**

**HB 346**

**Rep. LaVar Christensen**

This bill adds a new sub-section to 77-15-5 which states “(11) in determining the defendant’s competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the expert testimony, studies and reports provided under this section”.

Although judges have in practice often listened to lay testimony in competency hearings there was not any language specifically allowing it.

**Amends:** 77-15-5

## **RECEIPT OF WELFARE BENEFITS AMENDMENTS**

**HB 366**

**Rep. John Dougall**

This bill requires the Department of Workforce Services to report the misuse of a Social Security number when discovered while in the process of determining eligibility for public benefits. The department is to notify the cardholder of the misuse or in the case of a minor the minor’s parent or guardian. The bill also requires, when permissible under federal law, that the appropriate law enforcement agency be notified. Where such notification is not allowed the department is to notify the Legislative Management Committee.

**Amends:** 35A-1-104.5

## PROPERTY TAX MODIFICATIONS

**HB 387**

**Rep. John Dougall**

This bill simplifies reporting of personal property to the county assessor. The bill applies to any personal property with an acquisition cost of \$1,000 or less and that is deducted as an expense on federal tax returns (the old statute applied to different classes of personal property, which required taxpayers to determine which class the property belonged to and report each of those classes to the assessor). The depreciation schedule that applies to this property is also simplified to more round percentages that are unchanging. These changes make it easier for taxpayers to report and county assessors to administer.

**Amends:** 59-12-2103

## JUVENILE COMPETENCY AMENDMENTS

**HB 393**

**Rep. Kay McIff**

The main substance of this bill is the establishment of procedure to be followed when the competence of a juvenile to proceed in a delinquency case comes into question. That procedure, which makes up almost half of the 22 page bill and which will be found in the newly enacted Part 13, Juvenile Competency, of the Juvenile Court Act, Title 78A, Chapter 6, should be carefully reviewed by all Juvenile Court practitioners. It is too extensive to meaningfully summarize here.

As shown in the long title, the bill:

- requires the Department of Human Services to:
  - conduct juvenile competency evaluations in the least restrictive setting;
  - upon a finding of good cause, use a second examiner to evaluate the juvenile; and
  - prepare an attainment plan when a minor is found not competent to proceed;
- grants the juvenile court jurisdiction over a minor not competent to proceed;
- defines:
  - "Mental disorder";
  - "Intellectual disability";
  - "Not competent to proceed"; and
  - "Related condition";
- establishes competency to proceed standards and procedures.

**Amends:** 33 62A-1-108.5, 62A-1-111, 78A-6-101, 78A-6-103, 78A-6-105, 78A-6-208,

**Enacts:** 78A-6-1301, 78A-6-1302, 78A-6-1303,

## FIREARMS AMENDMENTS

**HB 395**

**Rep. Stephen Sandstrom**

Many persons who become firearms restricted persons own and/or possess guns which were lawfully acquired prior to their having become restricted and which were not used in the act(s) which

caused them to become restricted. Prior to passage of this bill, such persons were in a Catch 22 situation; it was unlawful for them to own or possess firearms AND it was also unlawful for them to sell or transfer those firearms to anyone else. To that end, this bill provides in 76-10-503 an affirmative defense to possession or sale of a firearm by a restricted person as follows:

- (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:
- (i) was possessed by the person or was under the person's custody or control before the person became a restricted person;
  - (ii) was not used in or possessed during the commission of a crime or subject to disposition under Section 76-10-525;
  - (iii) is not being held as evidence by a court or law enforcement agency;
  - (iv) was transferred to a person not legally prohibited from possessing the weapon;
  - and
  - (v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.
- (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

The above allowed sale or transfer of a firearm or other dangerous weapon by an otherwise restricted person may not, however, be made to a person whom the seller / transferor knows to be a person who is restricted from owning or possessing firearms or other dangerous weapons. Any such transfer by our newly restricted person is a 2<sup>nd</sup> degree felony if the transferee is a category I restricted person and a 3<sup>rd</sup> degree felony if the transferee is a category II restricted person. If the transfer is of a dangerous weapon that is not a firearm, the offense levels drop by one degree.

The bill makes it a crime to knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under circumstances which the person knows would be a violation of the law.

Furthermore, a person may not provide to a dealer or other person "materially false information" with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon. "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal. A violation of this provision is a 3<sup>rd</sup> degree felony if the transaction involved a firearm, or a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

Finally, the bill moves illegal aliens from category II restricted persons to category I restricted persons. That automatically raises the level of the offense if they violate weapon possession laws.

**Amends:** 53-5-704 and 76-10-503.

## **OFF-HIGHWAY VEHICLE REVISIONS**

**HB 401**

**Rep. Patrick Painter**

All off highway vehicle which are operated on any public lands or on any public road or highway must first be registered with the Motor Vehicle Division. This bill provides that an off-highway vehicle for which an off-highway implement of husbandry sticker has been issued is exempt from having to provide to the Motor Vehicle Division a certificate from the county assessor that the property tax on the off-highway vehicle has been paid.

**Amends:** 41-22-3

## **NEW CAR SAFETY AND EMISSIONS INSPECTION**

**HB 407**

**Rep. Don Ipson**

Provides that vehicles less than two years old on January 1 based, on the model year identified by the manufacturer, are exempt from the requirement to obtain an emissions inspection. Since both HB 298 and HB 407 passed, the provision regarding safety inspections in HB 407 will not become part of section 53-8-205. This bill coordinates with HB 298.

**Amends:** 41-6a-1642 and 53-8-205.

**Effective date:** October 1, 2012.

## **COUNTY CORRECTIONAL FUNDING AMENDMENTS**

**HB 442**

**Rep. Michael Noel**

This bill increases the compensation paid by the state to counties for housing state inmates; if the county jail provides treatment programs, the reimbursement rate is 79% and if the county does not provide treatment programs, reimbursement is 73%.

**Amends:** 64-13e-103.

## **PUBLIC EMPLOYEE STATUS MODIFICATIONS**

**HB 449**

**Rep. Brad Dee**

The essence of this bill is the clarification of “at-will” employees and “merit” employees of municipalities. In addition to identifying department directors and clarifying that their deputies or assistants are “at-will”, it now includes their secretaries or administrative assistants, and the staff of elected officials as “at-will” employees. It also authorizes municipalities to have up to 5% of their workforce as “at-will” as long that status is within the job description for that position and the employees have acknowledged in writing that their status is “at-will.”

This bill also provides that the procedural safeguard, for municipal employees that may be subject to a discharge or suspension or involuntary transfer, may be waived by the employee. Further, the municipality may utilize a hearing officer in lieu of the appeal board as provided by statute. The procedure is also inapplicable if the discharge or transfer is a result of a layoff or reorganization.

**Amends:** 10-3-1002, 10-3-1105 and 10-3-1106.

## **CITATION AMENDMENTS**

**HB 453**

**Rep. Don Ipson**

This bill clarifies that a law enforcement officer may issue a citation or make and arrest or do both.

**Amends:** 77-7-18.

## **WORDING ON ELECTION BALLOTS**

**HB 488**

**Rep. Evan Vickers**

When more than one candidate may be selected by the voter, amendment changes the ballot wording from “vote for two or more” to “Vote for up to \_\_\_\_\_” with the number of candidates which the voter can select inserted.

**Amends:** 20A-6-301, 20A-6-401, 20A-6-401.1 and 20A-6-402.

## **MIDTERM VACANCY AMENDMENTS**

**HB 491**

**Rep. John Dougall**

In filling a midterm vacancy of an elected office, cities and local school boards are required to interview, in an open meeting, each person whose name is submitted for consideration regarding their qualifications for the position. It also amends the Open Meeting Act to prohibit such open meeting interviews from being closed even if the discussion involves the “character, professional competence, or physical or mental health of an individual.” It also prohibits discussion of filling a midterm vacancy in a closed meeting.

**Amends:** 20A-1-510, 20A-1-511 and 52-4-205.

## **CAMPAIGN FINANCE DISCLOSURE AMENDMENTS**

**HB 493**

**Rep. Kraig Powell**

Municipal and county candidates are required to have a separate campaign account. All candidates are required to include the contributions and expenditures from all open campaign accounts on their financial disclosures. Political action committees and political issue committees are required to report contributions to the lieutenant governor within 30 days of receipt. Lastly, the scope of the separate electioneering communication reporting requirement was limited to non-reporting entities who pay for an electioneering communication.

**Amends:** 10-3-208, 17-16-6.5, 20A-11-101, 20A-11-201, 20A-11-301, 20A-11-602, 20A-11-802, 20A-11-901 and 20A-11-1301.

## **CAMPAIGN FINANCE AMENDMENTS**

**HB 494**

**Rep. Stewart Barlow**

Political action committees and political issue committees must now also file financial reports before municipal general elections.

**Amends:** 20A-11-602, 20A-11-603, 20A-11-802 and 20A-11-803.

## **INCORPORATION AMENDMENTS**

**HB 502**

**Rep. Melvin Brown**

This bill makes changes in the process by which municipalities are incorporated. For the incorporation of both cities and towns, the new legislation permits incorporation proponents to be involved in hiring a feasibility study consultant. Further, incorporation elections can only be held on General Election days, not as a special election. For the incorporation of a city, the bill changes incorporation petition requirements from one-third of the area proposed and one-third the assessed value to 10% of registered voters, representing at least 90% of the voting districts located in the proposed city (but not counting split districts). The incorporation process for towns is also changed: the petition requirements are reduced from one-half assessed value and one-third area to one-fifth assessed value and one-fifth registered voters; in addition, a feasibility study is now mandatory for towns. Prior statute prohibited the incorporation of a town if a feasibility study demonstrated that the anticipated revenues of the town exceeded by 15% the estimated costs of providing services; the new law changes this to 10%.

**Amends:** 10-2-101, 10-2-102, 10-2-104, 10-2-105, 10-2-106, 10-2-108, 10-2-109, 10-2-111, 10-2-116, 10-2-125, 17-27a-302, 20A-1-102, 20A-1-203 and 20A-1-204.

**Enacts:** 10-2-126, 10-2-127, 10-2-128 and 10-2-129.

## AGRICULTURAL CODE AMENDMENTS

**HB 505**

**Rep. Brad Galvez**

Most of this 29 page bill has little, if any application to prosecutors or law enforcement. Hidden deep in Title 4, the Agricultural Code, however, is a new class B misdemeanor and a prohibition, the latter of which may have more appropriately been put into Title 23, the Wildlife Code.

**4-25-12. Allowing swine to run at large -- Class B misdemeanor.**

(1) A person is guilty of a class B misdemeanor if the person:

(a) is in control of a swine; and

(b) allows the swine to run at large.

(2) A person described in Subsection (1) is liable for damage caused by the swine running at large.

**4-25-12.1. Release of swine for hunting purposes.**

A person may not release swine on public or private property for hunting purposes.

**Repeals and Reenacts:** 4-25-12

**Enacts:** 4-25-12.1

The bill amends, repeals and enacts many other code sections, but those two are the ones that relate to the above described provisions.

## INDIGENT DEFENSE ACT

**HB 510**

**Rep. Gregory Hughes**

This bill attempts to remedy problems created by the Utah Supreme Court's decision in State of Utah v. Parduhn, 2011 UT 55, which held that counties are required to pay for defense related resources, such as expert witnesses or investigators, even if a criminal defendant has retained private legal counsel. The bill provides that legal defenders and other defense service providers offer all legal defense services as a package deal, revises definitions and other provisions regarding a determination of indigence, establishes a process by which a court reviews a request for county-provided legal defense resources when a defendant has retained private legal counsel, and permits cities and counties to establish their own legal defense system and process for paying extraordinary defense resource costs, including regionalizing criminal defense among multiple cities or counties through the Interlocal Cooperation Act.

**Amends:** 77-32-201, 77-32-202, 77-32-301, 77-32-302, 77-32-303, 77-32-304, 77-32-304.5, 77-32-305.5, 77-32-306, 77-32-307 and 77-32-401.

## **JOINT RESOLUTION ON FEDERAL TRANSFER OF PUBLIC LANDS**

**HJR 3**

**Rep. Roger Barrus**

This is one of several state/federal sovereignty enactments. The resolution demands that the federal government transfer title of the public lands within Utah directly to the state of Utah, excluding national park lands. It calls for the creation of a Utah Public Lands Commission to review and manage the use and possible sale of public lands; 5% of the proceeds of such sales would go to the state's permanent public education fund and 95% paid to the federal government to relieve the federal debt.

## **JOINT RESOLUTION URGING CONGRESS TO SUPPORT EQUITY AND SALES TAX FAIRNESS**

**HJR 14**

**Rep. Steve Eliason**

This joint resolution urges that Congress pass legislation to establish the fair and constitutional collection of state sales taxes by both in-state and mail order sellers.



# SENATE BILLS

## MEDICAL EXAMINER AMENDMENTS

**SB 13**

**Sen. Allen Christensen**

Utah may be the only state in the country which statutorily removes automatic jurisdiction from the Medical Examiner in auto crash fatalities. It's a long story, going back about 30 years to a powerful legislator whose son was killed in a crash and who was very distraught at how long the ME took to release her son's body, and very distraught at what was done to the body by the ME and the condition in which the body was returned to her. The next year she pushed through a bill which removed auto crash deaths from the purview of the Medical Examiner unless an autopsy was required or permitted under 26-4-13 or was requested by the law enforcement agency with jurisdiction over the highway accident. Despite repeated attempts by the ME over the years to change that statute, with the support of law enforcement and prosecutors, the prohibition has remained until now.

This bill simply removes the 30 year old language, thus requiring the state medical examiner to assume custody of a body when it appears that the death is the result of a highway accident.

The bill also appropriates \$350,000 from the state general fund, ongoing, to the Medical Examiner's Office to pay for the additional work.

**Amends:** 26-4-7

## OFF-HIGHWAY VEHICLES AMENDMENTS

**SB 15**

**Sen. Ralph Okerlund**

Increasingly, local law enforcement has been calling upon assistance from the UHP Aero Bureau to aid in search and rescue operations in remote areas. The Department of Public Safety has pretty much always acceded to such requests, even though it often meant flying the helicopter many hundreds of miles and paying overtime to the crew. Until now, neither the UHP nor the Public Safety budgets included specified funds to pay for such search and rescue operations.

This bill creates the Utah Highway Patrol Aero Bureau Restricted Account. On the theory that most search and rescue operations would be obviated if people didn't head into the mountains or deserts on their snowmobiles or ATVs, get into trouble and require rescuing, the bill funds the new account by mandating that \$1 of each off-highway vehicle registration fee be deposited in the Utah Highway Patrol Aero Bureau Restricted Account.

**Amends:** 41-22-8, 41-22-19 and 63J-1-602.3.

**Enacts:** 53-8-301, 53-8-302 and 53-8-303.

**Effective date:** July 1, 2012.

## **BALLOT PROPOSITION AMENDMENTS**

### **SB 16**

**Sen. Scott Jenkins**

Changes the verification of signatures from the back of each page to just the final page of the petition packet. Allows someone who verifies petition signatures to be a temporary nonresident if all other qualifications are met.

**Amends:** 20A-1-102, 20A-7-101, 20A-7-503, 20A-7-505, 20A-7-506, 20A-7-601, 20A-7-603, 20A-7-605 and 20A-7-606.

**Enacts:** 20A-1-307.

## **CANDIDATE VACANCY AMENDMENTS**

### **SB 17**

**Sen. Peter Knudson**

Clarifies the term disability as being one which “prevents the candidate from continuing the candidacy” in both the candidate vacancy filling procedures and in the bylaws for political parties regarding the same.

**Amends:** 20A-1-501 and 20A-8-401.

## **GRAMA – VOTER REGISTRATION RECORDS**

### **SB 18**

**Sen. Margaret Dayton**

This bill modifies the Election Code and GRAMA to provide that voter registration records are public information, except for those entries classified as private under GRAMA. The GRAMA provision regarding the privacy of personal identifiers is expanded to include email address.

**Amends:** 20A-2-308 and 63G-2-302.

## **VOTER INFORMATION PAMPHLETS**

### **SB 19**

**Sen. Peter Knudson**

In elections requiring a voter information pamphlet, provides the option to send a postcard with the address to the statewide electronic voter information website and a phone number to call if the person wishes to request a paper voter information pamphlet be mailed to them. Requires the lieutenant governor to study the effectiveness of the postcard notice method and provide the results by October 1, 2013. Changes numerous deadlines to require earlier submissions to or objections to the proposed information in the voter pamphlets. Requires the lieutenant governor to provide paper pamphlets to locations frequented by persons who have limited access to the internet.

**Amends:** 11-14-202, 20A-7-209, 20A-7-402, 20A-7-702, 20A-7-703, 20A-7-704, 20A-7-706 and 20A-7-801.

## **PETITIONS BY CANDIDATES OR POLITICAL PARTIES**

**SB 20**

**Sen. Peter Knudson**

This bill clarifies the required form and substance for a political party registration petition and an unaffiliated candidate's certificate of nomination petition, including a requirement to verify the signatures in each packet. It also creates a class A misdemeanor for anyone who knowingly signs either petition with a false name, signs more than once or signs without any intention of becoming a Utah registered voter.

**Amends:** 20A-8-103 and 20A-9-502.

## **AMENDMENTS TO REVENUE AND TAXATION TITLE**

**SB 27**

**Sen. Howard Stephenson**

This bill was passed in response to the *Ivory Homes v. Utah State Tax Commission* Utah Supreme Court decision. The bill clarifies that the Tax Commission refund statute, Utah Code Section 59-1-1410, applies to all errors in payment of taxes. The bill also provides that a refund is appropriate if the taxpayer can demonstrate from its own books after the taxes have been paid that an error was made on the billing invoice as to transactions that were or were not subject to sales tax or were subject to a different tax rate. The bill codifies appellate courts' rules of statutory construction of tax statutes. Finally, certain sections of the bill have retroactive effect to refund requests that were pending on September 27, 2011.

**Amends:** 10-1-405, 59-1-1410, 59-1-1417, 59-12-102, 59-12-103 and 59-12-110.

## **TRESPASSING ON STATE LANDS**

**SB 33**

**Sen. Margaret Dayton**

Creates Class B misdemeanors for the following acts:

- Camping or returning to camp on sovereign lands for more than 15 days at the same location;
- Leaving an anchored or beached vessel unattended for longer than 48 hours;
- Leave an anchored or beached vessel for longer than 72 hours at the same location and fail to move the vessel at least 2 miles.

**Amends:** 65A-3-1

## **WILDLAND FIRE AMENDMENTS**

**SB 38**

**Sen. Margaret Dayton**

This bill defines "wildland fires" and provides that a person who negligently, recklessly, or intentionally causes or spreads a wildland fire shall be liable for the cost of suppressing that wildland fire, regardless of whether the fire begins on private land, land owned by the state, federal land or

tribal land. A person who incurs costs to suppress a wildland fire may bring an action under this section to recover those costs, as well as any other legal remedies available to him or her.

**Amends:** 25 65A-1-1, 65A-3-2 and 65A-3-3.

**Repeals and Reenacts:** 29 65A-3-4.

## **REGULATION OF TANNING FACILITIES**

### **SB 41**

**Sen. Patricia Jones**

Requires parental permission or a written order from a physician for minors to use tanning facilities. Creates a Class C misdemeanor for anyone who “misrepresents to a tanning facility that a person is over the age of 18 years.”

**Amends:** 26-15-13

## **MOTOR VEHICLE IMPOUNDMENT AMENDMENTS**

### **SB 50**

**Sen. Michael Waddoups**

In addition to the current violations requiring impound, provides that peace officers shall seize and impound motor vehicles driven by operators who are disqualified, suspended or revoked for one of the following offenses: refusal to submit (41-6a-520); driving under the influence (41-6a-502 (or local DUI ordinance)); measurable amount of metabolite (41-6a-517); automobile homicide (76-5-207); alcohol restricted driver (41-6a-530); a pled-down conviction that began as one of the offenses listed here. However, if the registered owner of the vehicle, other than the operator, is present at the time of arrest, the peace officer may release the vehicle to the registered owner if he or she meets the conditions in section 41-6a-527(2), which have not changed under this bill.

**Amends:** 41-6a-527.

**Effective date:** July 1, 2012

## **ISSUANCE OF BLASTING PERMITS**

### **SB 57**

**Sen. Ralph Okerlund**

Newly enacted 15A-5-208 provides that an operational permit is required for the use of any quantity of explosives or explosive materials for the purpose of blasting. City and county attorney offices will need to meet with their local fire department(s) to (a) determine whether the department wants to adopt procedures for issuing blasting permits, and (b) if so, work with the fire department and the local governing body to adopt procedures for the issuance of blasting permits.

The legislation provides that the State Fire Marshall’s Office shall issue blasting permits for (a) for those locations where the local fire department having jurisdiction of the location of the blast

does not have a procedure in place for issuing blasting permits, and (b) for multiple blasting activities that are part of one project and that involve blasts in the jurisdictions of more than one fire department.

**Enacts:** 15A-5-208

## **PROPERTY TAX VALUATION AMENDMENTS**

**SB 58**

**Sen. Wayne Niederhauser**

This bill requires the county assessor to consider a valuation reduction during the previous three years (by the Board of Equalization, Tax Commission, or Courts) when assessing the value for the current year. Specifically, the assessor shall consider any additional information about the property that came to light during a prior year's appeal and whether the reasons for the valuation reduction continue to influence the fair market value of the property. The clerk of the Board of Equalization is to give notice to the county assessor of all valuation reductions.

**Amends:** 59-2-1002, 59-2-1003 and 59-2-1004.

**Enacts:** 59-2-301.4.

## **TRAFFIC ACCIDENT EMERGENCY RESPONSE FEES**

**SB 60**

**Sen. Stuart Adams**

Prohibits UDOT, UHP, or a person who contracts with UDOT or UHP to provide emergency services, from imposing a flat fee, or collecting a flat fee, from a person involved in a motor vehicle accident, and provides that only certain costs for services may be charged to a person involved in a motor vehicle accident. If more than one person is involved in a motor vehicle accident, costs shall be apportioned so that not more than the actual cost of service is received by DOT, UHP or the contractor. This is essentially, word for word in some parts, a redo in Title 41, Chapter 6a of 2011's SB 273, which applied almost identical provisions to cities and their emergency contractors.

**Enacts:** 41-6a-409.

## **ALTERNATIVE ENERGY DEVELOPMENT TAX INCENTIVES**

**SB 65**

**Sen. Stuart Adams**

Enacts a non-refundable alternative energy development tax credit and a non-refundable alternative energy manufacturing tax credit against both corporate and individual income taxes. For both credits, the Revenue and Taxation Interim Committee must undertake a study of the credit's effects every 5 years. Enacts the procedures for the tax credits and oversight for the credits. Enacts definitions for alternative energy in place of renewable energy, as well as adds definitions for alternative energy facility and oil sands. Also exempts sales of electricity produced from a new

alternative energy source as well as the tangible personal property used in the construction of a new alternative energy electricity production facility.

**Amends:** 10-1-304, 59-7-614.2, 59-10-1107, 59-12-102, 59-12-104 and 63M-4-401.  
**Enacts :** 59-7-614.7, 59-7-614.8, 59-10-1029, 59-10-1030, 63M-1-3101, 63M-1-3102, 63M-1-3103, 63M-1-3104, 63M-1-3105, 63M-4-501, 63M-4-502, 63M-4-503, 63M-4-504 and 63M-4-505.  
**Repeals:** 63M-1-2803, 63M-1-2804, 63M-1-2805 and 63M-1-2806.

## **PREDATOR CONTROL FUNDING**

### **SB 87**

**Sen. David Hinkins**

While not the hottest topic in the 2012 session, wildlife predator control received some attention this year.

This bill creates a Predator Control Restricted Account within the General Fund. Funds in the new account are to be used by the Division of Wildlife Resources to fund a predator control program to control populations of predatory animals that endanger the health of non-predatory wildlife populations. Read that to mean going after coyotes which have a nasty habit of eating lots of young deer and elk, leaving less to be shot by hunters. To fund the new account, the bill increases the big game hunting permit by \$5. Based upon the appropriation in the bill, the legislature seems to expect this new charge will generate in the neighborhood of \$600,000. See also SB 245, which also deals with predator (coyote) control.

**Amends:** 23-19-22  
**Enacts:** 23-19-48

## **MUNICIPAL ELECTION AMENDMENTS**

### **SB 89**

**Sen. Margaret Dayton**

This bill clarifies the definition of “Reporting Limit” in 10-3-208(b) by making it clear that the reporting limit is to be calculated on a calendar year basis.

**Amends:** 10-3-208

## **AMENDMENTS TO PROHIBITION ON USING A HANDHELD WIRELESS COMMUNICATION DEVICE WHILE OPERATING A VEHICLE**

### **SB 98**

**Sen. Lyle Hillyard**

- Amends the definition of text message to include manually communicating in the form of electronic text or image(s) sent by a handheld wireless communication device (“HWCD”)

to another person's HWCD or computer by addressing the communication to the person's phone number, and to include composing a communication in the form of electronic text or an electronic image(s) even if not sent to another person.

- Prohibits using a HWCD while operating a moving motor vehicle on a highway to:
  - text message,
  - manually communicate through email,
  - manually enter data into a HWCD,
  - send data, read text,
  - view images, or
  - manipulate an application from a HWCD.
- Making or receiving phone calls using a HWCD is not prohibited, nor is using a HWCD for global positioning or navigation services.
- Using a HWCD to operate hands-free or voice operated technology is not prohibited, nor is using a HWCD to operate a system that is physically or electronically integrated into the motor vehicle.
- Provides that a person is guilty of automobile homicide involving a HWCD if the person uses it while operating a motor vehicle in a negligent or criminally negligent manner and causes the death of another person.

**Amends:** 41-6a-1716 and 76-5-207.5.

## **EMPLOYMENT AMENDMENTS**

**SB 99**

**Sen. Mark Madsen**

This bill prohibits municipalities and counties from enacting an ordinance that requires private employers to provide the following benefits to their employees: accident and health insurance, life insurance, sick leave, or family medical leave. The bill permits a local government to consider whether a vendor provides such benefits when the city or county is evaluating requests for proposals in the procurement process.

**Enacts:** 10-8-84.5 and 17-50-333.

## **AMENDMENTS TO OFF-HIGHWAY VEHICLE PROVISIONS**

**SB 102**

**Sen. Scott Jenkins**

The bill was written to keep up with the ever increasing size and variety of all terrain vehicles. It:

- provides that "All-terrain type II vehicles" include Class A side-by-side vehicles; and
- defines "Class A side-by-side vehicles" to include any motor vehicle 65 inches or less in width, having an unladen dry weight of 2,000 pounds or less, traveling on four or more non-highway tires and designed for or capable of travel over unimproved terrain.

**Amends:** 41-22-2

## CONTESTING PUBLIC PROCUREMENTS

**SB 114**

**Sen. Wayne Niederhauser**

This bill exemplifies the fact that no bureaucracy is too small. In order for the state or any state agencies to procure, obtain, or otherwise simply purchase items, it must follow the state's procurement procedures. If any entity wants to challenge the process or the contract for the procurement of those goods, such an appeal is placed before the procurement policy board. This bill increased the number and membership of that board.

Most state agencies are familiar with this process and are further encouraged to comply with this morass of regulation. Counties and cities, and interlocals involving those entities, are only exempt if they have adopted their own procurement procedures. Counties and cities are hereby forewarned that this legislation contemplated including those entities. Counties and cities are still exempt from this process, however, this bill and SB 153 are a proverbial shot across the bow to ensure that your procurement procedures are in order.

**Amends:** 26-8A-405.3, 63A-5-208, 63G-6-104, 63G-6-201, 63G-6-202, 63G-6-801, 63G-6-802, 63G-6-803, 63G-6-805, 63G-6-806, 63G-6-812, 63G-6-813, 63G-6-816, 63G-6-817, 63G-6-819 and 63G-10-403.  
**Enacts:** 63G-6-901.5, 63G-6-807.5 and 63G-6-814.5.  
**Repeals & Re-enacts:** 63G-6-807, 63G-6-815 and 63G-6-907.  
**Repeals:** 63G-6-808, 63G-6-809, 63G-6-810, 63-6-811 and 63G-6-814.

## ARMED FORCES PROPERTY TAX EXEMPTION

**SB 116**

**Rep. Luz Robles**

Expands the veteran's exemption for property taxes to include members of the United States Armed Forces who serve at least 200 days on active duty military service outside the state.

**Amends:** 59-2-1104 and 59-2-1105.

## TRANSFERABLE DEVELOPMENT RIGHT AMENDMENTS

**SB 118**

**Sen. Wayne Niederhauser**

This legislation amends the Transferable Development Rights (TDR) laws already existing by firming up some of the definitions and more clearly articulating the requirements for local TDR ordinances. It also prohibits the transfer of development rights as defined under this statute without first having a local TDR ordinance in place.

**Amends:** 10-9a-103, 10-9a-509.7, 17-27a-103 and 17-27a-509.7.



## OFF-DUTY PEACE OFFICERS' EMPLOYMENT

**SB 120**

**Sen. Margaret Dayton**

Requires mandatory policies of law enforcement agencies concerning off-duty security work by their officers to be posted on the internet.

**Amends:** 53-13-114

## URBAN FARMING ASSESSMENT ACT

**SB 122**

**Sen. Wayne Niederhauser**

Enacts an act similar to the Farmland Assessment Act in Utah Code 59-2-501, *et seq.*, but is aimed at urban farming in counties of the first class. The act allows that land between two and five contiguous acres in size that is currently actively devoted to urban farming and has been actively devoted for at least two successive previous years may be assessed at the value the land has for agricultural use. If the land ceases to be eligible for assessment under the act, there is a 10 year rollback of taxes with certain exceptions contained in the act.

**Enacts:** 59-2-1701, 59-2-1702, 59-2-1703, 59-2-1704, 59-2-1705, 59-2-1706, 59-2-1707, 59-2-1708, 59-2-1709, 59-2-1710, 59-2-1711 and 59-2-1712.

## COUNTY AMENDMENTS

**SB 124**

**Sen. Curtis Bramble**

This bill amends provisions regarding the powers and responsibilities of county auditors; it is effective only in Salt Lake County until 2015. It recodifies the county auditor chapter by defining the functions of accounting, auditing, budgeting, and performance auditing. It establishes that accounting and auditing are performed by the county auditor, though the county governing body may, by ordinance, direct that accounting services will be performed by the county executive. It sets standards and practices regarding the performance of financial audits by the auditor and also provides that the auditor may conduct performance audits under the supervision and direction of the county governing body. The bill provides that budget preparation functions are conducted by the county executive and it also clarifies the extent of the auditor's investigative powers. Lastly, the legislation establishes immunity from lawsuit brought by county officials against the county governing body regarding setting budgets and allocating funds and employee positions.

**Amends:** 17-8-7, 17-19-3, 17-24-1, 17-24-4, 17-36-3, 17-36-9, 17-36-10, 17-36-11, 17-36-15, 17-36-20, 17-36-32, 17-36-43, 17-36-44, 17-50-401, 17-52-101, 17-52-401, 17-52-403, 17-53-212, 17-53-303, 20A-7-101, 63I-2-217, 63I-2-220, 63I-2-277 and 77-32-304.5.

**Enacts:** 17-19-30, 17-19a-101, 17-19a-102, 17-19a-201, 17-19a-202, 17-19a-203, 17-19a-204, 17-19a-205, 17-19a-206, 17-19a-207, 17-19a-208, 17-19a-301, 17-19a-401, 17-36-10.1, 17-36-11.1, 17-36-15.1, 17-36-20.1, 17-36-43.1, 17-50-401.1 and 17-52-401.1.

## **FINANCIAL TRANSPARENCY WEBSITE**

**SB 137**

**Sen. Wayne Niederhauser**

This bill mandates that an interlocal entity as defined in § 11-13-103 provide public financial information for the year beginning July 2, 2012, through the Utah Public Finance Website.

Amends: 23 63A-3-401 and 63A-3-405

## **EMERGENCY VEHICLE AMENDMENTS**

**SB 147**

**Sen. Daniel Thatcher**

Prohibits any vehicle from following closer than 500 feet an authorized emergency vehicle that is traveling in response to an emergency.

**Amends:** 41-6a-1710

## **LOCAL AND SPECIAL SERVICE DISTRICT AMENDMENTS**

**SB 150**

**Sen. Jerry Stevenson**

This bill includes mainly housekeeping modifications regarding local and special districts and changes the appointment and qualifications of certain local district board members, modifies notice requirements for district budget hearings, provides that the county assessor will assist a district board of trustees in determining which property owners are subject to certain charges and taxes, and provides that unpaid charges may become a lien against the property.

**Amends:** 17B-1-202, 17B-1-214, 17B-1-303, 17B-1-304, 17B-1-306, 17B-1-511, 17B-1-609, 17B-2a-404, 17B-2a-506, 17B-2a-704, 17B-2a-902, 17D-1-106, 17D-1-302, 17D-1-304, 20A-1-206, 20A-3-605 and 73-5-15.

## **PROCUREMENT AMENDMENTS**

**SB 153**

**Sen. Wayne Niederhauser**

This 329 page bill is another bureaucrat's dream come true. While the bill is primarily aimed at cleaning up the procurement process for state agencies, it threatened to sweep in counties and cities, requiring them to comply with this regulation. Because of the length of this bill this summary concludes with this advice

**County and city attorneys and procurement officers should ensure that your jurisdiction has its own procurement processes in place, otherwise it will become subject to this code.** Those in state government involved in the procurement process should familiarize themselves with these amendments.

See also SB 114, which deals with similar issues.

**Amends:** This bill amends or enacts over 440 sections of the Utah Code. Counties and cities should pay attention to the following sections:  
63G-6a-104, 10-3-1304, 10-3-1305, 10-7-86, 17-16a-4, 17-43-202, 17-43-302, 17-53-225 and 17-53-313.

## **REDEVELOPMENT AGENCY AMENDMENTS**

### **SB 165**

**Sen. Todd Weiler**

This bill primarily provides clarification for the regulations regarding redevelopment agencies. Substantively, it addresses the overlap of redevelopment agencies and provides that tax increment cannot exceed 100% in those overlapping areas.

**Amends:** 17C-1-102, 17C-1-201, 17C-1-207, 17C-1-401, 17C-1-402, 17C-2-610 and 63-6-103.

## **STATUTORY CONSTRUCTION - COMPUTATION OF TIME**

### **SB 166**

**Sen. John Valentine**

Section 68-3-7 is amended to provide:

#### **68-3-7. Time, how computed.**

- (1) A person shall compute the period of time provided by law to perform an act by:
  - (a) excluding the first day; and
  - (b) except as provided in Subsection (2), including the last day.
- (2) If the last day is a legal holiday, a Saturday, or a Sunday, then a person shall:
  - (a) exclude the day described in this Subsection (2) from the time computation described in Subsection (1); and
  - (b) compute the period of time to include the end of the next day that is not a legal holiday, a Saturday, or a Sunday.

Section 68-3-8 is amended to make it clear that the term “holiday” as used in computation of the period allowed by law to perform an act means only legal holidays.

**Amends:** 68-3-7 and 68-3-8

## **LAND USE AUTHORITY AMENDMENTS**

### **SB 174**

**Sen. Wayne Niederhauser**

This amendment to the county subdivision requirements was a last minute addition to the session. It allows for the subdivision of agricultural parcels without going through the subdivision process and without having to meet the underlying zoning. It requires that the parcel owner file a statement that declares the parcel will be used for agriculture and no other purpose and provides that

the parcel will have to comply with existing land use and zoning laws if ever the agricultural use is stopped and the parcel seeks any development.

**Amends:** 17-27a-605.

## **GRAMA AMENDMENTS**

### **SB 177**

**Sen. Curtis Bramble**

This bill amends GRAMA to require state and local government records officers complete annual training requirements established by state archives and grants archives rule making authority regarding training. The bill creates a state GRAMA ombudsman and sets out that position's powers and duties. The bill clarifies the GRAMA balancing test by providing for disclosure of a record when the public interest is equal to or greater than the interests in non-disclosure. The bill amends the attorney/client privileges regarding protected records by eliminating the provision regarding attorney's work product and mental impressions, but restating the protected status of records subject to the attorney/client privilege and records prepared by an attorney or agent in anticipation of judicial, quasi-judicial or administrative proceedings. It includes GRAMA protected status for imminent as well as pending litigation, making this GRAMA provision parallel to the Open Meetings Act. Lastly, the legislation modifies criminal defenses to a GRAMA violation based on a person's good faith belief that his or her actions regarding GRAMA were in accordance with the law.

**Amends:** 63C-4-102, 63G-2-103, 63G-2-201, 63G-2-202, 63G-2-206, 63G-2-301, 63G-2-305, 63G-2-309, 63G-2-401, 63G-2-403, 63G-2-404, 63G-2-405, 63G-2-801 and 78A-4-106.

**Enacts:** 63A-12-110, 63A-12-111, 63G-2-108 and 63G-2-406.

## **POLITICAL SUBDIVISION ETHICS AMENDMENTS**

### **SB 180**

**Sen. Curtis Bramble**

This bill establishes, on the state level, an ethics complaint review commission dedicated to resolving ethics complaints brought against local government officers and employees. The commission is appointed by the governor and staffed by the legislature; it operates as a quasi-judicial hearing board and conducts formal hearings similar to a traditional judicial court. The commission receives complaints from citizens and others regarding allegations of misconduct under the municipal, county, or state officers' and employees' ethics and disclosure acts; notifies the local government of such complaint; and, where justified, notifies the appropriate public prosecutor of alleged criminal violations. Cities and counties are permitted to establish their own local ethics commissions, which would supplant the jurisdiction of the state commission. Local governments would be responsible, in certain circumstances, to pay attorneys fees if an employee is vindicated in the commission hearing. Lastly, the bill makes amendments to GRAMA and the Open Meetings Act related to the commission's meetings and activities.

**Amends:** 10-3-1311, 17-16a-11, 52-4-204, 63G-2-302, 67-16-3 and 67-16-4.

**Enacts:** 11-49-101, 11-49-102, 11-49-103, 11-49-201, 11-49-202, 11-49-301, 11-49-302, 11-49-401, 11-49-402, 11-49-403, 11-49-404, 11-49-405, 11-49-406, 11-49-407, 11-49-408, 11-49-501, 11-49-502, 11-49-601, 11-49-602, 11-49-603, 11-49-604, 11-49-701, 11-49-702, 11-49-703, 11-49-704, 11-49-705, 11-49-706 and 67-16-15.

## **EXPUNGEMENT OF DRUG OFFENSES**

**SB 182**

**Sen. Howard Stephenson**

Senator Stephenson's original goal was to make some fairly radical changes in the expungement statute to allow a person who has been convicted of multiple offenses due to a drug habit to be able to expunge multiple crimes after going through successful treatment. Those provisions were unworkable for a number of reasons and after considerable discussion Senator Stephenson agreed to set up a "Drug-Related Expungement Committee". Represented on that committee will be SWAP, BCI, Courts, Crime Victims, etc. Staff will be provided by the Utah Substance Abuse Advisory Counsel.

This bill does not add to the Utah code and when the committee finishes its work the bill is repealed as of November 30, 2012.

## **ACCOUNTABILITY FOR SCHOOL ATTENDANCE**

**SB 191**

**Sen. Jerry Stevenson**

This legislation addresses procedures with "habitual truants," and adds school resource officers to the list of persons who are authorized to issue a truancy notice to a student. Removes exclusive jurisdiction of juvenile courts.

**Amends:** 53A-11-101 and 53A-11-103.

## **BOND VALIDATION ACT AMENDMENTS**

**SB 192**

**Sen. Benjamin McAdams**

Amends the Utah Bond Validation Act to require the court to render final judgment on a bond action within 10 days of the hearing. Also amends the act to require the Supreme Court to expedite and give priority to the docketing and briefing of a bond action appeal.

**Amends:** 11-30-7, 11-30-8 and 11-30-10.

## LOCAL GOVERNMENT BONDING ACT AMENDMENTS

**SB 193**

**Sen. Curtis Bramble**

Amends the Local Government Bonding Act by providing that the 10-year period during which voter authorized bonds may be issued is tolled where the bonds are legally challenged or where a referendum regarding the local obligation law relating to the bond is filed. Under the act, if there is less than one year left after the tolling of the 10-year period to issue the bonds, the period to issue the bonds will be extended to one year. The tolling provisions apply to all bonds approved by the voters on or after May 8, 2002.

**Amends:** 11-14-301 and 11-14-311.

## TRANSPORTATION SAFETY REVISIONS

**SB 195**

**Sen. Karen Mayne**

Prohibits certain acts at railroad tracks and crossings: 1) U-turns; 2) Pedestrian crossings where railroad grade is active; 3) Limits driving through, around or under a railroad crossing gate. Adds railroads, airlines, airports, airways, highways, bridges, waterways, fixed guideways to list of “critical infrastructure” for purposes of criminal mischief statute.

**Amends:** 41-6a-802; 41-6a-1005; 41-6a-1203 and 76-6-106.

## JUSTICE COURT AMENDMENTS

**SB 200**

**Sen. Lyle Hillyard**

This was proposed, according to bill sponsors, as “clean-up” legislation that clarifies and fills gaps in Justice Court statutes that had not been modified for more than 20 years. The major changes are as follows:

- Allows expansion of justice courts territorial jurisdiction with the approval of the Judicial Council;
- Allows appeal to District Court and trial de novo for both guilty *and* no contest pleas;
- Creates procedures to appoint temporary justice court judges in the event of a vacancy.

**Amends:** 78A-7-101 through 78A-7-215 and 78A-8-101.

**Enacts:** 78A-7-103.

**Repeals:** 78A-7-104 through 78A-7-214.

## EXPUNGEMENT AMENDMENTS

**SB 201**

**Sen. Curtis Bramble**

This bill sets traffic offenses apart from more serious offenses in the expungement statute so that a person may obtain a certificate of eligibility to expunge an offense even if they have many traffic tickets, and places no limit on number of traffic offenses that may be properly expunged.

### **77-40-102. Definitions.**

(10) "Traffic offense" means all offenses in the following parts and all local ordinances that are substantially similar to the offenses:

- (a) Title 41, Chapter 6a, Part 3, Traffic-control Devices;
- (b) Title 41, Chapter 6a, Part 6, Speed Restrictions;
- (c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;
- (d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;
- (e) Title 41, Chapter 6a, Part 9, Right-of-Way; Enrolled Copy S.B. 201
- (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;
- (g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;
- (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;
- (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;
- (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;
- (k) Title 41, Chapter 6a, Part 15, Special Vehicles;
- (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;
- (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and
- (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

(The statute - does not include DUI's, serious traffic offenses, etc.).

### **77-40-105 Eligibility for Expungement of Conviction**

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

“(d) five or more convictions of any degree whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which is contained in a separate criminal episode.”

**Amends:** 77-40-102, 77-40-104 and 77-40-105

## RECORDS ACCESS DISCOVERY AMENDMENTS

**SB 205**

**Sen. Curtis Bramble**

This bill allows a state or local prosecutor to provide information concerning the defendant from the controlled substance database to a criminal defense attorney, upon request during discovery. The bill also allows for a criminal justice agency to provide the defendants information from a criminal background check to a defense attorney, upon request during discovery. This should

provide prosecutors protection against committing any crime involving these data bases when they provide rule and constitutionally mandated discovery to defense counsel.

**Amends:** 53-10-108 and 58-37f-301

## **PROCESS SERVER AMENDMENTS**

**SB 210**

**Sen. Stephen Urquhart**

This bill provides that licensed private investigators may serve all types of civil process, including bench warrants, however a private investigator may not arrest anyone pursuant to a bench warrant. “You are now served with this bench warrant, which was issued because you ignored an order of the court. Now, be a good boy and go turn yourself in. Have a nice day.”

The bill also provides that:

(a) while serving process, a private investigator shall:

(i) have on the investigator's person a visible form of credentials and identification identifying:

(A) the person by name;

(B) the person as a licensed private investigator; and

(C) the name and address of the agency employing the investigator or, if the investigator is self-employed, the address of the investigator's place of business;

(ii) verbally communicate to the person being served that the investigator is acting as a process server; and

(iii) print on the first page of each document served:

(A) the investigator's name and identification as a private investigator; and

(B) the address and phone number for the investigator's place of business.

(b) A private investigator may not use physical force or cause a breach of the peace while serving or attempting to serve process.

(c) A complaint regarding a private investigator serving process may be made to and investigated by the sheriff of the county where the incident being complained of occurred. If the sheriff determines the complaint is credible, the sheriff may restrict or prohibit a licensed private investigator from serving any or all types of process within the county.

**Amends:** 78B-8-302

## **JUSTICE COURT PROCESS AMENDMENTS**

**SB 214**

**Sen. Curtis Bramble**

Provides that if a Defendant appeals a justice court conviction other than for Reckless Driving of Driving Under the Influence for a trial de novo in District Court, the justice court **shall** stay all terms of a sentence. The stay is mandatory unless a judge finds by a preponderance of the evidence at the time of sentencing that the Defendant “poses a danger to another person or the community.” If a stay is ordered, the justice court may order post-conviction restrictions on the



Defendant's conduct, including continuation of pre-trial orders; protective orders; drugs and alcohol use; interlock use; posting of bail.

**NOTE:** This new legislation appears to contain some provisions that differ from the more lengthy provisions of Criminal Procedure Rule 27A - Stays Pending Appeal from Court Not of Record.

**Amends:** 77-20-10 and 78A-7-118.

## **REVENUE AND TAX AMENDMENTS**

### **SB 221**

**Sen. Curtis Bramble**

This bill modifies how the Property Tax Valuation Agency Fund (the fund that is created from larger counties contributing a portion of their assessing and collecting levy to smaller counties so that smaller counties can be able to accurately assess values for property taxes) is funded. The bill appears to make adjustments in the factor used to calculate the contributing counties' contribution so that these contributions are distributed more equitably. Should there be a surplus in the contribution that smaller counties are entitled to, the surplus is determined based on the county's percentage of the total contribution.

**Amends:** 59-2-102 and 59-2-1603.

## **CRIMINAL PROCEDURE AMENDMENTS**

### **SB 234**

**Sen. Lyle Hillyard**

This bill changes the sex offender registry concerning juveniles registered in Utah due to convictions in other states. If the state where the conviction was entered does not allow the publication of the juvenile conviction, Utah will now "maintain but not publish" the information concerning that juvenile's conviction.

**Amends:** 77-27-21.5; 77-41-102; 77-41-105 and 77-41-110.

## **CLARIFICATION OF STALKING INJUNCTIONS AND PROTECTIVE ORDERS**

### **SB 235**

**Sen. Todd Weiler**

This new law amends Sections 76-5-106.5 and 77-3a-101. It makes provisions for the criminal or civil court, when issuing a permanent criminal stalking injunction or a civil stalking injunction, allowing the court to consider parental rights with minor children of the victim and cohabitant stalker. It makes clear that permanent criminal stalking injunctions are to be issued upon conviction, with or without hearing.

The court in a criminal or civil stalking case may consider defendant's exercise of custody and parent time rights while ensuring the safety of the victim and any minor children in following Section 78B-7-106. A judge in criminal or civil stalking case may decline to address custody and parent-time issues and those issues may be addressed in any action in which custody and parent-time issues are being considered.

A copy of the criminal stalking injunction shall be filed in any action where custody and parent-time issues are being considered and that court may modify the injunction to balance those rights.

**Amends:** 76-5-106.5 and 77-3A-101.

## **GPS TRACKING AUTHORITY**

### **SB 236**

**Sen. Todd Weiler**

This bill repeals §77-23a-15.5, Mobile tracking device authorization. The bill is a response to the 2012 United States Supreme Court Decision, *U.S. v. Jones*, in which the Court ruled that law enforcement must have an actual search warrant (and thus probable cause) to place a mobile tracking device on a vehicle without permission. Because our mobile tracking device authorization statute did not require probable cause it was repealed to prevent law enforcement from mistakenly using the statute to place a GPS device without showing probable cause or getting a warrant.

**PRACTICE TIP:** In *U.S. v. Jones*, the decision turned on old style principals of 'trespass' onto another's property. The Court did not address whether tracking a person through some other means that did not require an actual 'trespass' would also require a search warrant. One of the concurring opinions, however, suggested that if you plan to track a person's movement over an extended period, the person may have a reasonable expectation of privacy in those movements. Thus, when tracking a person by means of some device, the safest route will be to obtain a warrant.

**Repeals:** 77-23a-15.5

## **GENERAL REPEALER**

### **SB 240**

**Sen. John Valentine**

- This bill repeals provisions of Utah Code that have been found unconstitutional relating to:
- a prohibition on legal voters of any county, city, or town initiating a budget, budget change, or land use ordinance, or requiring a budget or land use ordinance adopted by a local legislative body to the voters, former §20A-7-401;
  - a legal presumption of malice in criminal libel cases, former §76-9-503; and
  - a prohibition on the distribution of pornographic materials through cable televisions, former §76-10-1229.

It also repeals provisions of Utah Code that are not in use relating to:

- the use of certified local inspectors by the Office of Licensing, former 62A-2-108.3 - Local government -- Certified local inspector -- Local inspection of a residential treatment facility -- Reporting violations.

**Repeals:** 20A-7-401, 62A-2-108.3, 76-9-503 and 76-10-1229.

The bill also amends and repeals many other sections, but the above are the only ones of interest to public attorneys or law enforcement.

## **FLEEING A CONSERVATION OFFICER AMENDMENTS**

**SB 242**

**Sen. Daniel W. Thatcher**

Repeals Section 23-20-24 relating to fleeing a conservation officer. Those who flee from a conservation officer will now be prosecuted under §41-6a-210 or §76-8-305.5, the same as fleeing from any other peace officer.

**Repeals:** 23-20-24

## **REPEAL OF ILLEGAL DRUG STAMP TAX ACT**

**SB 243**

**Sen. Daniel Thatcher**

This bill repeals Title 59, Chapter 19, the Illegal Drug Stamp Tax Act.

**Amends:** 59-19-105, 63I-2-259, 63J-1-104 and 63J-2-202.

**Effective dates:** Except for the amendments to §§63G-1-104 and 63G-2-202, this bill takes effect on May 8, 2012.

The amendments to Sections 63J-1-104 and 63J-2-202 take effect on July 1, 2012.

## **MULE DEER PROTECTION ACT**

**SB 245**

**Sen. Ralph Okerland**

This is another bill going after our friend Wiley E Coyote, this time specifically by definition. Despite this, SB 87 and anything else we can think of to harass them, my money is on the coyotes. They will be around long after homo sapiens has become extinct.

The bill:

- enacts Title 23, Chapter 30, the Mule Deer Protection Act;
- creates the Mule Deer Protection Account, into which a total of \$.75 million, non-lapsing, is appropriated from the General Fund and the Agriculture Wildlife Protection Fund;
- grants rule making authority to the Division of Wildlife Resources to establish programs that reduce and control the coyote population generally and in areas where mule deer predation occurs, which rules are expected to include sizeable bounties on coyotes;
- requires the Division of Wildlife Resources to:
  - administer programs that reduce and control the coyote population; and

- coordinate with government entities and state entities in administering programs that reduce and control the coyote population;
- permits the Division of Wildlife Resources to contract with a vendor to reduce and control the coyote population in areas where mule deer predation occurs; and
- permits the Division of Wildlife Resources to prepare and distribute training materials related to mule deer protection.

**Enacts:** 23-30-101, 23-30-102, 23-30-103 and 23-30-104.

## **CONSERVATION DISTRICT AMENDMENTS**

**SB 247**

**Sen. David Hinkins**

This bill makes conservation districts subject to the same fiscal reporting and accounting rules applicable to other local districts, requires that a specific fiscal year be adopted and mandates that members of the board receive special training.

**Enacts:** 17D-3-105, 17D-3-106, 17D-3-107 and 17D-3-311.

## **POLICE SERVICE K-9'S RIGHTS**

**SB 259**

**Sen. Stuart Adams**

Simple. Provides that a police service canine that is in training may accompany its trainer to any of the places that a service animal for disabled persons is authorized to access, consistent with Section 62A-5b-103.

**Amends:** 62A-5b-104

## **AUTOMOBILE SALVAGE AMENDMENTS**

**SB 260**

**Sen. Stephen Urquhart**

Provides that any person, insurance company, or licensed dealer who fails to obtain a non-repairable certificate or who sells a non-repairable vehicle without first obtaining a non-repairable certificate is guilty of a class B misdemeanor, and makes other changes the salvage vehicle and related statutes.

**Amends:** 41-1a-1001, 41-3-201, 41-3-201.7, 41-3-701 and 41-3-702.

**Enacts:** 41-1a-1005.3 and 41-1a-1005.5.

**Effective date:** October 1, 2012

## PROPERTY TAX RATE AMENDMENTS

**SB 272**

**Sen. Benjamin McAdams**

This bill deals with calculation of the certified tax rate when an inordinate amount of redemptions comes in during a given year. Under the old statute, a 5-year average of redemptions is deducted from budgeted revenues when calculating the certified tax rate. However, a single year of substantial redemption revenues can skew the average, so this bill was enacted. The bill provides that when greater than 3 times the 5-year average for redemptions is collected in a single year, only 3 times the average is allocated to that year, and the difference between 3 times the average and the actual redemption revenue is spread out equally over the next 4 years.

Amends: 59-2-924.

## MUNICIPAL GOVERNMENT REVISIONS

**SB 275**

**Sen. Benjamin McAdams**

The only substantive change this bill makes is to provide that city governing bodies may enter into contracts for street lighting for such a period of time as the governing body considers advisable. Previous to the passage of this bill, the maximum allowed length of time for a street lighting contract was three years.

Amends: 10-7-6

## MUNICIPAL GOVERNMENT AUTHORITY

**SB 277**

**Sen. Stuart Adams**

This bill provides that cities may:

- “. . . may provide against and prevent the offense of obtaining money or property under false pretenses and the offense of embezzling money or property in all cases where the money or property embezzled or obtained under false pretenses does not exceed in value the sum of [~~\$100~~] \$500 . . .”
- “. . . may prohibit the sale, giving away, or furnishing of [~~intoxicating liquors or~~] narcotics, alcoholic beverages to a person younger than 21 years of age, or [~~of~~] tobacco to any person [~~under 21~~] younger than 19 years of age,” and
- “. . . may, by ordinance, prohibit the possession of controlled substances as defined in the Utah Controlled Substances Act or any other endangering or impairing substance, provided the conduct is not a class A misdemeanor or felony, and . . .”

Amends: 10-8-47

## **MORTGAGE AND FINANCIAL FRAUD INVESTIGATIONS**

**SB 281**

**Sen. Benjamin McAdams**

Provides for the funding of a Mortgage and Financial Fraud Unit within the Attorney Generals Office. Appropriated \$2,000,000.00 non lapsing for said unit.

**Amends:** 67-5-1.5

**Enacts:** 67-5-30, 67-5-31

## **JOINT RESOLUTION ON PROPERTY TAX EXEMPTION**

**SJR 8**

**Rep. Luz Robles**

Proposes to amend the constitution to allow the state legislature to exempt real property owned by a person in the military or the person's spouse, or both, and used as the person's primary residence, if the person serves under an order to federal active duty out of state for at least 200 days in a calendar year or 200 consecutive days.

**Amends:** If approved by voters, the bill will amend Article XIII, Section 3, Utah Constitution.

## **CONCURRENT RESOLUTION ON THE NATIONAL DEFENSE AUTHORIZATION ACT**

**SCR 11**

**Sen. Todd Weiler**

This is one of several state/federal sovereignty enactments. This resolution expresses concern regarding the federal enactment of Sections 1021 and 1022 of the National Defense Authorization Act, which affirms the authority of the United States Armed Forces to detain, in military custody and pending disposition under the laws of war, certain defined persons, including those associated with the attacks on September 11, 2001. The resolution takes the position that the indefinite military detention of a U.S. citizen without charges or trial violates the federal and state constitutions and urges Congress to clarify or repeal Sections 1021 and 1022.

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