

METAL THEFT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the regulation of metal dealers under the Criminal Code and changes the numbering of listed sections.

Highlighted Provisions:

This bill:

- ▶ increases the penalty for violations by sellers regarding regulated metal;
- ▶ provides increased penalties for repeat violations of the Regulation of Metal Dealers Act by dealers and sellers;
- ▶ clarifies that county and municipal governmental entities may deny or revoke licenses or other regulatory permits upon violation of the Regulation of Metal Dealers Act;
- ▶ clarifies that persons who violate this act may also be charged with other offenses related to the illegal possession or sale of stolen regulated metal;
- ▶ requires that dealers obtain a photograph and signature from repeat sellers at each transaction;
- ▶ provides that all metal dealer transactions are subject to the Regulation of Metal Dealers Act by removing the exemption for small amounts of metal;
- ▶ relocates and renumbers the Regulation of Metal Dealers Act;
- ▶ relocates market discrimination and antitrust provisions currently in this part into separate parts; and



28 ▶ makes related amendments to cross references.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **10-18-103**, as enacted by Laws of Utah 2001, Chapter 83

36 **13-32a-102**, as last amended by Laws of Utah 2012, Chapter 284

37 **13-44-301**, as last amended by Laws of Utah 2008, Chapter 29

38 **76-6-402.5**, as enacted by Laws of Utah 2009, Chapter 325

39 **76-6-408**, as last amended by Laws of Utah 2009, Chapter 272

40 **76-6-412.5**, as enacted by Laws of Utah 2009, Chapter 325

41 **78B-8-503**, as last amended by Laws of Utah 2010, Chapter 87

42 **RENUMBERS AND AMENDS:**

43 **76-6-1401**, (Renumbered from 76-10-900.5, as enacted by Laws of Utah 2007, Chapter
44 320)

45 **76-6-1402**, (Renumbered from 76-10-901, as last amended by Laws of Utah 2009,
46 Chapter 325)

47 **76-6-1403**, (Renumbered from 76-10-907, as last amended by Laws of Utah 2009,
48 Chapter 325)

49 **76-6-1404**, (Renumbered from 76-10-907.1, as enacted by Laws of Utah 2007, Chapter
50 320)

51 **76-6-1405**, (Renumbered from 76-10-907.2, as enacted by Laws of Utah 2007, Chapter
52 320)

53 **76-6-1406**, (Renumbered from 76-10-907.3, as last amended by Laws of Utah 2009,
54 Chapter 325)

55 **76-6-1407**, (Renumbered from 76-10-908, as last amended by Laws of Utah 2007,
56 Chapter 320)

57 **76-6-1408**, (Renumbered from 76-10-910, as last amended by Laws of Utah 2007,
58 Chapter 320)

- 59 **76-6-1409**, (Renumbered from 76-10-910.5, as enacted by Laws of Utah 2007, Chapter
- 60 320)
- 61 **76-10-3001**, (Renumbered from 76-10-902, as enacted by Laws of Utah 1973, Chapter
- 62 196)
- 63 **76-10-3002**, (Renumbered from 76-10-903, as enacted by Laws of Utah 1973, Chapter
- 64 196)
- 65 **76-10-3003**, (Renumbered from 76-10-904, as enacted by Laws of Utah 1973, Chapter
- 66 196)
- 67 **76-10-3004**, (Renumbered from 76-10-905, as enacted by Laws of Utah 1973, Chapter
- 68 196)
- 69 **76-10-3005**, (Renumbered from 76-10-906, as last amended by Laws of Utah 1991,
- 70 Chapter 241)
- 71 **76-10-3101**, (Renumbered from 76-10-911, as enacted by Laws of Utah 1979, Chapter
- 72 79)
- 73 **76-10-3102**, (Renumbered from 76-10-912, as enacted by Laws of Utah 1979, Chapter
- 74 79)
- 75 **76-10-3103**, (Renumbered from 76-10-913, as enacted by Laws of Utah 1979, Chapter
- 76 79)
- 77 **76-10-3104**, (Renumbered from 76-10-914, as enacted by Laws of Utah 1979, Chapter
- 78 79)
- 79 **76-10-3105**, (Renumbered from 76-10-915, as last amended by Laws of Utah 2010,
- 80 Chapter 154)
- 81 **76-10-3106**, (Renumbered from 76-10-916, as last amended by Laws of Utah 1991,
- 82 Chapter 99)
- 83 **76-10-3107**, (Renumbered from 76-10-917, as last amended by Laws of Utah 1999,
- 84 Chapter 40)
- 85 **76-10-3108**, (Renumbered from 76-10-918, as last amended by Laws of Utah 2006,
- 86 Chapter 19)
- 87 **76-10-3109**, (Renumbered from 76-10-919, as last amended by Laws of Utah 2010,
- 88 Chapter 154)
- 89 **76-10-3112**, (Renumbered from 76-10-920, as last amended by Laws of Utah 2010,

90 Chapter 324)

91 **76-10-3113**, (Renumbered from 76-10-921, as enacted by Laws of Utah 1979, Chapter
92 79)

93 **76-10-3114**, (Renumbered from 76-10-922, as last amended by Laws of Utah 2009,
94 Chapter 61)

95 **76-10-3115**, (Renumbered from 76-10-923, as enacted by Laws of Utah 1979, Chapter
96 79)

97 **76-10-3116**, (Renumbered from 76-10-924, as enacted by Laws of Utah 1979, Chapter
98 79)

99 **76-10-3117**, (Renumbered from 76-10-925, as enacted by Laws of Utah 1979, Chapter
100 79)

101 **76-10-3118**, (Renumbered from 76-10-926, as enacted by Laws of Utah 1979, Chapter
102 79)

103

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

105 Section 1. Section **10-18-103** is amended to read:

106 **10-18-103. Antitrust immunity.**

107 (1) When a municipality is offering or providing a cable television service or public
108 telecommunications service, the immunity from antitrust liability afforded to political
109 subdivisions of the state under Section [~~76-10-919~~] 76-10-3109 does not apply to the
110 municipality providing those services.

111 (2) A municipality that provides a cable television service or a public
112 telecommunications service is subject to applicable antitrust liabilities under the federal Local
113 Government Antitrust Act of 1984, 15 U.S.C. Secs. 34 to 36.

114 Section 2. Section **13-32a-102** is amended to read:

115 **13-32a-102. Definitions.**

116 As used in this chapter:

117 (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations
118 Restricted Account created in Section 13-32a-113.

119 (2) "Antique item" means an item:

120 (a) that is generally older than 25 years;

121 (b) whose value is based on age, rarity, condition, craftsmanship, or collectability;

122 (c) that is furniture or other decorative objects produced in a previous time period, as
123 distinguished from new items of a similar nature; and

124 (d) obtained from auctions, estate sales, other antique shops, and individuals.

125 (3) "Antique shop" means a business operating at an established location and that
126 offers for sale antique items.

127 (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board
128 created by this chapter.

129 (5) "Central database" or "database" means the electronic database created and
130 operated under Section 13-32a-105.

131 (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a
132 disc that is:

133 (a) stamped metal, and issued by a government as monetary currency; or

134 (b) (i) worth more than its current value as currency; and

135 (ii) worth more than its metal content value.

136 (7) "Coin dealer" means a person or business whose sole business activity is the selling
137 and purchasing of coins and precious metals.

138 (8) "Commercial grade precious metals" or "precious metals" means ingots, monetized
139 bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or
140 fabricator indicating their fineness and include:

141 (a) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious
142 metals; or

143 (b) .925 fine sterling silver ingots, art bars, and medallions.

144 (9) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
145 Department of Commerce.

146 (10) "Identification" means a form of positive identification issued by a governmental
147 entity and that:

148 (a) contains a numerical identifier and a photograph of the person identified; and

149 (b) may include a state identification card, a state drivers license, a United States
150 military identification card, or a United States passport.

151 (11) "Local law enforcement agency" means the law enforcement agency that has

152 direct responsibility for ensuring compliance with central database reporting requirements for
153 the jurisdiction where the pawnshop or secondhand business is located.

154 (12) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or
155 otherwise appropriated without authority of the lawful owner.

156 (13) "Original victim" means a victim who is not a party to the pawn or sale transaction
157 and includes:

158 (a) an authorized representative designated in writing by the original victim; and

159 (b) an insurer who has indemnified the original victim for the loss of the described
160 property.

161 (14) "Pawnbroker" means a person whose business engages in the following activities:

162 (a) loans money on one or more deposits of personal property;

163 (b) deals in the purchase, exchange, or possession of personal property on condition of
164 selling the same property back again to the pledgor or depositor;

165 (c) loans or advances money on personal property by taking chattel mortgage security
166 on the property and takes or receives the personal property into his possession, and who sells
167 the unredeemed pledges;

168 (d) deals in the purchase, exchange, or sale of used or secondhand merchandise or
169 personal property; or

170 (e) engages in a licensed business enterprise as a pawnshop.

171 (15) "Pawn and secondhand business" means any business operated by a pawnbroker
172 or secondhand merchandise dealer, or the owner or operator of the business.

173 (16) "Pawn ticket" means a document upon which information regarding a pawn
174 transaction is entered when the pawn transaction is made.

175 (17) "Pawn transaction" means an extension of credit in which an individual delivers
176 property to a pawnbroker for an advance of money and retains the right to redeem the property
177 for the redemption price within a fixed period of time.

178 (18) "Pawnshop" means the physical location or premises where a pawnbroker
179 conducts business.

180 (19) "Pledgor" means a person who conducts a pawn transaction with a pawnshop.

181 (20) "Property" means any tangible personal property.

182 (21) "Register" means the record of information required under this chapter to be

183 maintained by pawn and secondhand businesses. The register is an electronic record that is in a
184 format that is compatible with the central database.

185 (22) "Scrap jewelry" means any item purchased solely:

186 (a) for its gold, silver, or platinum content; and

187 (b) for the purpose of reuse of the metal content.

188 (23) (a) "Secondhand merchandise dealer" means an owner or operator of a business
189 that:

190 (i) deals in the purchase, exchange, or sale of used or secondhand merchandise or
191 personal property; and

192 (ii) does not function as a pawnbroker.

193 (b) "Secondhand merchandise dealer" does not include:

194 (i) the owner or operator of an antique shop;

195 (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;

196 (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel,
197 and outboard motor dealers as defined in Section 41-1a-102;

198 (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard
199 sales," or "estate sales";

200 (v) the sale or receipt of secondhand books, magazines, or post cards;

201 (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious,
202 or charitable organizations or any school-sponsored association, and for which no
203 compensation is paid;

204 (vii) the sale or receipt of secondhand clothing and shoes;

205 (viii) any person offering his own personal property for sale, purchase, consignment, or
206 trade via the Internet;

207 (ix) any person or entity offering the personal property of others for sale, purchase,
208 consignment, or trade via the Internet, when that person or entity does not have, and is not
209 required to have, a local business or occupational license or other authorization for this activity;

210 (x) any owner or operator of a retail business that receives used merchandise as a
211 trade-in for similar new merchandise;

212 (xi) an owner or operator of a business that contracts with other persons or entities to
213 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the

214 Internet;

215 (xii) any dealer as defined in Section [~~76-10-901~~] 76-6-1402, which concerns scrap
216 metal and secondary metals; or

217 (xiii) the purchase of items in bulk that are:

218 (A) sold at wholesale in bulk packaging;

219 (B) sold by a person licensed to conduct business in Utah; and

220 (C) regularly sold in bulk quantities as a recognized form of sale.

221 Section 3. Section **13-44-301** is amended to read:

222 **13-44-301. Enforcement.**

223 (1) The attorney general may enforce this chapter's provisions.

224 (2) (a) Nothing in this chapter creates a private right of action.

225 (b) Nothing in this chapter affects any private right of action existing under other law,
226 including contract or tort.

227 (3) A person who violates this chapter's provisions is subject to a civil fine of:

228 (a) no greater than \$2,500 for a violation or series of violations concerning a specific
229 consumer; and

230 (b) no greater than \$100,000 in the aggregate for related violations concerning more
231 than one consumer.

232 (4) In addition to the penalties provided in Subsection (3), the attorney general may
233 seek injunctive relief to prevent future violations of this chapter in:

234 (a) the district court located in Salt Lake City; or

235 (b) the district court for the district in which resides a consumer who is affected by the
236 violation.

237 (5) In enforcing this chapter, the attorney general may:

238 (a) investigate the actions of any person alleged to violate Section 13-44-201 or
239 13-44-202;

240 (b) subpoena a witness;

241 (c) subpoena a document or other evidence;

242 (d) require the production of books, papers, contracts, records, or other information
243 relevant to an investigation; and

244 (e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative

245 Procedures Act, to enforce a civil provision under this chapter.

246 (6) A subpoena issued under Subsection (5) may be served by certified mail.

247 (7) A person's failure to respond to a request or subpoena from the attorney general
248 under Subsection (5)(b), (c), or (d) is a violation of this chapter.

249 (8) (a) The attorney general may inspect and copy all records related to the business
250 conducted by the person alleged to have violated this chapter, including records located outside
251 the state.

252 (b) For records located outside of the state, the person who is found to have violated
253 this chapter shall pay the attorney general's expenses to inspect the records, including travel
254 costs.

255 (c) Upon notification from the attorney general of the attorney general's intent to
256 inspect records located outside of the state, the person who is found to have violated this
257 chapter shall pay the attorney general \$500, or a higher amount if \$500 is estimated to be
258 insufficient, to cover the attorney general's expenses to inspect the records.

259 (d) The attorney general shall deposit any amounts received under this Subsection (8)
260 in the Attorney General Litigation Fund established in Section [~~76-10-922~~] 76-10-3114.

261 (e) To the extent an amount paid to the attorney general by a person who is found to
262 have violated this chapter is not expended by the attorney general, the amount shall be refunded
263 to the person who is found to have violated this chapter.

264 (f) The Division of Corporations and Commercial Code or any other relevant entity
265 shall revoke any authorization to do business in this state of a person who fails to pay any
266 amount required under this Subsection (8).

267 Section 4. Section **76-6-402.5** is amended to read:

268 **76-6-402.5. Defense regarding metal dealers.**

269 It is a defense against a charge of theft under this part and a defense against a civil
270 claim for conversion if any dealer as defined in Section [~~76-10-901~~] 76-6-1402 has acted in
271 compliance with Title 76, Chapter [~~10~~] 6, Part [~~9~~] 14, Regulation of Metal Dealers.

272 Section 5. Section **76-6-408** is amended to read:

273 **76-6-408. Receiving stolen property -- Duties of pawnbrokers, secondhand
274 businesses, and coin dealers.**

275 (1) A person commits theft if he receives, retains, or disposes of the property of

276 another knowing that it has been stolen, or believing that it probably has been stolen, or who
277 conceals, sells, withholds or aids in concealing, selling, or withholding the property from the
278 owner, knowing the property to be stolen, intending to deprive the owner of it.

279 (2) The knowledge or belief required for Subsection (1) is presumed in the case of an
280 actor who:

281 (a) is found in possession or control of other property stolen on a separate occasion;

282 (b) has received other stolen property within the year preceding the receiving offense
283 charged;

284 (c) is a pawnbroker or person who has or operates a business dealing in or collecting
285 used or secondhand merchandise or personal property, or an agent, employee, or representative
286 of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller
287 or person delivering the property to:

288 (i) certify, in writing, that he has the legal rights to sell the property;

289 (ii) provide a legible print, preferably the right thumb, at the bottom of the certificate
290 next to his signature; and

291 (iii) provide at least one positive form of identification; or

292 (d) is a coin dealer or an employee of the coin dealer as defined in Section 13-32a-102
293 who does not comply with the requirements of Section 13-32a-104.5.

294 (3) Every pawnbroker or person who has or operates a business dealing in or collecting
295 used or secondhand merchandise or personal property, and every agent, employee, or
296 representative of a pawnbroker or person who fails to comply with the requirements of
297 Subsection (2)(c) is presumed to have bought, received, or obtained the property knowing it to
298 have been stolen or unlawfully obtained. This presumption may be rebutted by proof.

299 (4) When, in a prosecution under this section, it appears from the evidence that the
300 defendant was a pawnbroker or a person who has or operates a business dealing in or collecting
301 used or secondhand merchandise or personal property, or was an agent, employee, or
302 representative of a pawnbroker or person, that the defendant bought, received, concealed, or
303 withheld the property without obtaining the information required in Subsection (2)(c) or (2)(d),
304 then the burden shall be upon the defendant to show that the property bought, received, or
305 obtained was not stolen.

306 (5) Subsections (2)(c), (3), and (4) do not apply to scrap metal processors as defined in

307 Section ~~[76-10-901]~~ 76-6-1402.

308 (6) As used in this section:

309 (a) "Dealer" means a person in the business of buying or selling goods.

310 (b) "Pawnbroker" means a person who:

311 (i) loans money on deposit of personal property, or deals in the purchase, exchange, or
312 possession of personal property on condition of selling the same property back again to the
313 pledge or depositor;

314 (ii) loans or advances money on personal property by taking chattel mortgage security
315 on the property and takes or receives the personal property into his possession and who sells
316 the unredeemed pledges; or

317 (iii) receives personal property in exchange for money or in trade for other personal
318 property.

319 (c) "Receives" means acquiring possession, control, or title or lending on the security
320 of the property.

321 Section 6. Section **76-6-412.5** is amended to read:

322 **76-6-412.5. Property damage caused in the course of committing a theft.**

323 If a defendant who commits or attempts to commit theft as defined in Section 76-6-404
324 of regulated metal as defined in Section ~~[76-10-901]~~ 76-6-1402 and in the course of
325 committing or attempting to commit the theft causes damage to any person's real or personal
326 property other than the regulated metal, the defendant is liable for restitution for all costs
327 incurred due to the damage to the person's property.

328 Section 7. Section **76-6-1401**, which is renumbered from Section 76-10-900.5 is
329 renumbered and amended to read:

330 **Part 14. Regulation of Metal Dealers**

331 ~~[76-10-900.5]~~. **76-6-1401. Title.**

332 This part is known as "Regulation of Metal Dealers."

333 Section 8. Section **76-6-1402**, which is renumbered from Section 76-10-901 is
334 renumbered and amended to read:

335 ~~[76-10-901]~~. **76-6-1402. Definitions.**

336 As used in this part:

337 (1) "Catalytic converter" means a motor vehicle exhaust system component that

338 reduces vehicle emissions by breaking down harmful exhaust emissions.

339 (2) "Dealer" means any scrap metal processor or secondary metals dealer or recycler,
 340 but does not include junk dealers or solid waste management facilities as defined in Section
 341 19-6-502.

342 (3) "Ferrous metal" means a metal that contains significant quantities of iron or steel.

343 (4) "Identification" means a form of positive identification issued by [~~a governmental~~
 344 ~~entity~~] the state of Utah or the United States federal government that:

- 345 (a) contains a numerical identifier and a photograph of the person identified;
- 346 (b) provides the date of birth of the person identified; and
- 347 (c) includes a state identification card, a state driver license, a United States military
 348 identification card, or a United States passport.

349 (5) "Junk dealer" means all persons, firms, or corporations engaged in the business of
 350 purchasing or selling secondhand or castoff material, including ropes, cordage, bottles,
 351 bagging, rags, rubber, paper, and other like materials, but not including regulated metal.

352 (6) "Local law enforcement agency" means the law enforcement agency that has
 353 jurisdiction over the area where the dealer's business is located.

- 354 (7) "Nonferrous metal":
- 355 (a) means a metal that does not contain significant quantities of iron or steel; and
- 356 (b) includes copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.

357 (8) (a) "Regulated metal" means any item composed primarily of nonferrous metal,
 358 except as provided in Subsection (8)(c).

359 (b) "Regulated metal" includes:

- 360 (i) aluminum, brass, copper, lead, chromium, ~~tin~~ → [f] tin [f] ~~light iron or sheet steel~~ ← ~~tin~~ ,
 360a nickel, or
- 361 alloys of these metals, except under Subsection (8)(c);
- 362 (ii) property owned by, and also identified by marking or other means as the property
 363 of:
- 364 (A) a telephone, cable, electric, water, or other utility; or
- 365 (B) a railroad company;
- 366 (iii) unused and undamaged building construction materials made of metal or alloy,
 367 including:
- 368 (A) copper pipe, tubing, or wiring; and

- 369 (B) aluminum wire, siding, downspouts, or gutters;
- 370 (iv) oil well rigs, including any part of the rig;
- 371 (v) nonferrous materials, stainless steel, and nickel; and
- 372 (vi) irrigation pipe.
- 373 (c) "Regulated metal" does not include:
- 374 (i) ferrous metal, except as provided in Subsection (8)(b)(ii) or (iv);
- 375 (ii) household-generated recyclable materials;
- 376 (iii) items composed wholly of ~~[tin]~~ light iron or sheet steel;
- 377 (iv) aluminum beverage containers; or
- 378 (v) containers used solely for containing food.
- 379 (9) "Secondary metals dealer or recycler" means any person who:
- 380 (a) is engaged in the business of purchasing, collecting, or soliciting regulated metal; or
- 381 (b) operates or maintains a facility where regulated metal is purchased or kept for
- 382 shipment, sale, transfer, or salvage.
- 383 (10) "Scrap metal processor" means any person:
- 384 (a) who, from a fixed location, utilizes machinery and equipment for processing and
- 385 manufacturing iron, steel, or nonferrous scrap into prepared grades; and
- 386 (b) whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap, not
- 387 including precious metals, for sale for remelting purposes.
- 388 (11) "Suspect metal items" are the following items made of regulated metal:
- 389 (a) manhole covers and sewer grates;
- 390 (b) gas meters and water meters;
- 391 (c) traffic signs, street signs, aluminum street light poles, communications transmission
- 392 towers, and guard rails;
- 393 (d) grave site monument vases and monument plaques;
- 394 (e) any monument plaque;
- 395 (f) brass or bronze bar stock and bar ends;
- 396 (g) ingots;
- 397 (h) nickel and nickel alloys containing greater than 50% nickel;
- 398 (i) #1 and #2 copper as defined by the most recent institute of Scrap Recycling
- 399 Industries, Inc., Scrap Specifications Circular;

- 400 (j) unused and undamaged building materials, including:
- 401 (i) greenline copper;
- 402 (ii) copper pipe, tubing, or wiring; and
- 403 (iii) aluminum wire, siding, downspouts, or gutters;
- 404 (k) catalytic converters; and
- 405 (l) wire that has been burned or that has the appearance of having been burned.

406 Section 9. Section **76-6-1403**, which is renumbered from Section 76-10-907 is
407 renumbered and amended to read:

408 ~~[76-10-907]~~. **76-6-1403. Records of sales and purchases -- Identification**
409 **required.**

- 410 (1) Every dealer shall:
 - 411 (a) require the information under Subsection (2) for each transaction of regulated
412 metal, except under Subsection ~~[76-10-907.3]~~ 76-6-1406(4); and
 - 413 (b) maintain for each purchase of regulated metal the information required by this part
414 in a written or electronic log, in the English language.
- 415 (2) The dealer shall require the following information of the seller and shall record the
416 information as required under Subsection (1) for each purchase of regulated metal:
 - 417 (a) a complete description of the regulated metal, including weight and metallic
418 description, in accordance with scrap metal recycling industry standards;
 - 419 (b) the full name and residence of each person selling the regulated metal;
 - 420 (c) the vehicle type and license plate number, if applicable, of the vehicle transporting
421 the regulated metal to the dealer;
 - 422 (d) the price per pound and the amount paid for each type of regulated metal purchased
423 by the dealer;
 - 424 (e) the date, time, and place of the purchase;
 - 425 (f) the type and the identifying number of the identification provided in Subsection
426 (2)(g);
 - 427 (g) at least one form of identification;
 - 428 (h) the seller's signature on a certificate stating that he has the legal right to sell the
429 scrap metal or junk; and
 - 430 (i) a digital photograph or still video of the seller, taken at the time of the sale, or a

431 clearly legible photocopy of the seller's identification.

432 (3) No entry in the log may be erased, deleted, mutilated, or changed.

433 (4) The log and entries shall be open to inspection by the following officials having
434 jurisdiction over the area in which the dealer does business during regular business hours:

435 (a) the county sheriff or deputies;

436 (b) any law enforcement agency; and

437 (c) any constable or other state, municipal, or county official in the county in which the
438 dealer does business.

439 (5) A dealer shall make these records available for inspection by any law enforcement
440 agency, upon request, at the dealer's place of business during the dealer's regular business
441 hours.

442 (6) Log entries made under this section shall be maintained for not less than [~~one year~~]
443 three years from date of entry.

444 (7) (a) The dealer may maintain the information required by Subsection (2) for repeat
445 sellers who use the same vehicle to bring regulated metal for each transaction in a relational
446 database that allows the dealer to enter an initial record of the seller's information and then
447 relate subsequent transaction records to that initial information, except under Subsection (7)(b).

448 [~~(8) This section does not apply to a single purchase of regulated metal by a dealer if:~~]

449 [~~(a) the weight of regulated metal is less than 50 pounds; and]~~

450 [~~(b) the price paid to the seller is less than \$100.]~~

451 (b) The dealer shall obtain regarding each transaction with repeat sellers:

452 (i) a photograph of the seller; and

453 (ii) a signature from the seller.

454 Section 10. Section **76-6-1404**, which is renumbered from Section 76-10-907.1 is
455 renumbered and amended to read:

456 [~~76-10-907.1~~]. **76-6-1404. Notice to sellers of identification requirements.**

457 A dealer shall at all times maintain in a prominent place at the dealer's place of
458 business, in open view to a seller of regulated metal, a clearly legible notice in not less than
459 two-inch high lettering that contains the following language: "A PERSON ATTEMPTING TO
460 SELL ANY REGULATED METAL MUST PROVIDE IDENTIFICATION AS REQUIRED
461 BY STATE LAW".

462 Section 11. Section **76-6-1405**, which is renumbered from Section 76-10-907.2 is
463 renumbered and amended to read:

464 ~~[76-10-907.2]~~. **76-6-1405. Qualifications to sell to dealer.**

465 (1) A dealer may not purchase regulated metal from a person younger than 18 years of
466 age.

467 (2) If the person is unable to comply with all the identification requirements of
468 Subsection ~~[76-10-907]~~ 76-6-1403(2), the dealer may not conduct a transaction of regulated
469 metal with that person.

470 Section 12. Section **76-6-1406**, which is renumbered from Section 76-10-907.3 is
471 renumbered and amended to read:

472 ~~[76-10-907.3]~~. **76-6-1406. Restrictions on the purchase of regulated metal --**
473 **Exemption.**

474 (1) A dealer may conduct purchase transactions involving regulated metal only
475 between the hours of 6 a.m. and 7 p.m.

476 (2) Except when the dealer pays a government entity by check for regulated metal, the
477 dealer may not purchase any of the following regulated metal without obtaining and keeping on
478 file reasonable documentation that the seller is an employee, agent, or contractor of a
479 governmental entity who is authorized to sell the item of regulated metal property on behalf of
480 the governmental entity:

- 481 (a) a manhole cover or sewer grate;
- 482 (b) an electric light pole; or
- 483 (c) a guard rail.

484 (3) (a) A dealer may not purchase suspect metal without obtaining the information
485 under Subsection (3)(b) identifying the owner of the suspect metal.

486 (b) The owner of the suspect metal shall provide in writing:

- 487 (i) the owner's telephone number;
- 488 (ii) the owner's business or residential address, which may not be a post box;
- 489 (iii) a copy of the owner's driver license; and
- 490 (iv) a signed statement that the person is the lawful owner of the suspect metal and
491 authorizes the seller, identified by name, to sell the suspect metal.

492 (c) The dealer shall keep the identifying information provided in Subsection (3)(b) on

493 file for not less than one year.

494 (4) Transactions with businesses that have an established account with the dealer are
495 exempt from the requirements of Subsections (2) and (3) if the business holds a valid business
496 license, and:

497 (a) (i) the dealer has on file a statement from the business identifying those employees
498 authorized to sell all metals to the dealer; and

499 (ii) the dealer conducts regulated metal transactions only with those identified
500 employees of the business and records the name of the employee when recording the
501 transaction;

502 (b) the dealer has on file reasonable documentation from the business that any person
503 verified as representing the business as an employee, and whom the dealer has verified is an
504 employee, may sell regulated metal; or

505 (c) the dealer makes payment for regulated metal purchased from a person by issuing a
506 check to the business employing the seller.

507 Section 13. Section ~~76-6-1407~~, which is renumbered from Section 76-10-908 is
508 renumbered and amended to read:

509 ~~[76-10-908].~~ **76-6-1407. Violation by dealer -- Penalty -- Local regulation**
510 **not less stringent.**

511 (1) (a) Any dealer who violates any of the provisions of this part is guilty of a class C
512 misdemeanor.

513 (b) A violation of Subsection (1)(a) that occurs after the defendant has been convicted
514 of a violation of Subsection (1)(a) is a class A misdemeanor.

515 (2) This section does not impair the [~~power of counties, cities, or incorporated~~
516 ~~municipalities]~~ authority of a county or municipality in this state to license, tax, and regulate
517 any junk dealer or metal dealer, except that local regulations may not be any less stringent than
518 the provisions in this part.

519 (3) This section does not impair the authority of a county or municipality to revoke or
520 deny any business license or permit required by that county or municipality regulating the
521 authority to sell, purchase, or possess metal, including the revocation or denial of a business
522 license or permit based on a violation of this part.

523 (4) This section does not prohibit the charging of a seller or dealer with any other

524 criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

525 Section 14. Section **76-6-1408**, which is renumbered from Section 76-10-910 is
526 renumbered and amended to read:

527 ~~[76-10-910].~~ **76-6-1408. Falsification of seller's statement to dealer.**

528 (1) Any seller who, in providing any information as required by this part in selling,
529 offering, or attempting to sell regulated metal willfully makes a false statement or provides any
530 untrue information, is guilty of a class B misdemeanor.

531 (2) A violation of Subsection (1) that occurs after the defendant has been convicted of
532 a violation of Subsection (1) is a class A misdemeanor.

533 Section 15. Section **76-6-1409**, which is renumbered from Section 76-10-910.5 is
534 renumbered and amended to read:

535 ~~[76-10-910.5].~~ **76-6-1409. Hold on stolen regulated metal property -- Hold**
536 **notice.**

537 (1) If a law enforcement agency has reasonable cause to believe that items of regulated
538 metal in the possession of a dealer are stolen, the law enforcement agency may issue a written
539 hold notice. The hold notice shall:

- 540 (a) identify those items of regulated metal alleged to be stolen and subject to hold; and
- 541 (b) inform the dealer of the restrictions imposed on the regulated metal property under
542 Subsection (2).

543 (2) For 60 days after the date of receiving a hold notice, a dealer may not process or
544 remove from the dealer's place of business any regulated metal identified in the hold notice,
545 unless the property is released earlier by the law enforcement agency or by order of a court of
546 competent jurisdiction.

547 (3) On the expiration of the hold notice period, the hold is automatically released, and
548 the dealer may dispose of the regulated metal, unless otherwise directed by a court of
549 competent jurisdiction.

550 Section 16. Section **76-10-3001**, which is renumbered from Section 76-10-902 is
551 renumbered and amended to read:

552 **Part 30. Unfair Market Discrimination**

553 ~~[76-10-902].~~ **76-10-3001. Fraudulent practices to affect market price.**

554 Every person who willfully makes or publishes any false statement, spreads any false

555 rumor, or employs any other false or fraudulent means or device, with intent to affect the
556 market price of any kind of property, is guilty of a class B misdemeanor.

557 Section 17. Section **76-10-3002**, which is renumbered from Section 76-10-903 is
558 renumbered and amended to read:

559 **~~[76-10-903].~~ 76-10-3002. Unfair discrimination in competitive practices.**

560 Every person engaged in the production, manufacture, or distribution of any commodity
561 in general use who intentionally for the purpose of destroying the competition of any regular,
562 established dealer in such commodity, or to prevent the competition of any person who in good
563 faith intends and attempts to become a dealer, discriminates between different sections,
564 communities, or cities of this state by selling the commodity at a lower rate in one section,
565 community, or city, or any portion thereof, than the person charges for the commodity in
566 another section, community, or city, after equalizing the distance from the point of production,
567 manufacture, or distribution and freight rates therefrom, is guilty of unfair discrimination.

568 Section 18. Section **76-10-3003**, which is renumbered from Section 76-10-904 is
569 renumbered and amended to read:

570 **~~[76-10-904].~~ 76-10-3003. Corporation guilty of unfair discrimination --**
571 **Action by attorney general.**

572 If complaint is made to the attorney general that any corporation is guilty of unfair
573 discrimination as defined by the preceding section, he shall investigate the complaint, and for
574 that purpose, he may subpoena witnesses, administer oaths, take testimony, and require the
575 production of books or other documents, and, if in his opinion sufficient grounds exist therefor,
576 he may prosecute an action in the name of the state in the proper court to annul the charter or
577 revoke the license of the corporation, as the case may be, and to permanently enjoin the
578 corporation from doing business in this state, and, if in the action the court finds that the
579 corporation is guilty of unfair discrimination as defined by the preceding section, the court
580 shall annul the charter or revoke the license of the corporation and may permanently enjoin it
581 from transacting business in this state.

582 Section 19. Section **76-10-3004**, which is renumbered from Section 76-10-905 is
583 renumbered and amended to read:

584 **~~[76-10-905].~~ 76-10-3004. Penalty for violation.**

585 Any person, firm, or corporation violating any of the provisions of this part shall be

586 fined not less than \$500 nor more than \$4,000 for each offense.

587 Section 20. Section **76-10-3005**, which is renumbered from Section 76-10-906 is
588 renumbered and amended to read:

589 ~~[76-10-906].~~ **76-10-3005. Unfair discrimination by buyer of milk, cream**
590 **or butterfat -- Classification of offense.**

591 Any person doing business in this state and engaged in the business of buying milk,
592 cream, or butterfat for the purpose of sale or storage, who, for the purpose of creating a
593 monopoly or destroying the business of a competitor, discriminates between different sections,
594 communities, localities, cities, or towns of this state by purchasing the commodity or
595 commodities at a higher price or rate in one section, community, location, city, or town than is
596 paid for the same commodity by the person in another section, community, locality, city, or
597 town, after making due allowance for the difference, if any, in the grade or quality, and in the
598 actual cost of transportation from the point of purchase to the point of manufacture, sale, or
599 storage, is guilty of unfair discrimination, which is hereby prohibited and declared to be
600 unlawful; and any person, firm, company, association, or corporation, or any officer, agent,
601 receiver, or member of such firm, company, association, or corporation, found guilty of unfair
602 discrimination as herein defined shall be guilty of a class B misdemeanor.

603 Section 21. Section **76-10-3101**, which is renumbered from Section 76-10-911 is
604 renumbered and amended to read:

605 **Part 31. Utah Antitrust Act**

606 ~~[76-10-911].~~ **76-10-3101. Title.**

607 This ~~[act shall be]~~ part is known~~[, and may be cited,]~~ as the "Utah Antitrust Act."

608 Section 22. Section **76-10-3102**, which is renumbered from Section 76-10-912 is
609 renumbered and amended to read:

610 ~~[76-10-912].~~ **76-10-3102. Legislative findings -- Purpose of act.**

611 The Legislature finds and determines that competition is fundamental to the free market
612 system and that the unrestrained interaction of competitive forces will yield the best allocation
613 of our economic resources, the lowest prices, the highest quality and the greatest material
614 progress, while at the same time providing an environment conducive to the preservation of our
615 democratic, political and social institutions.

616 The purpose of this act is, therefore, to encourage free and open competition in the

617 interest of the general welfare and economy of this state by prohibiting monopolistic and unfair
618 trade practices, combinations and conspiracies in restraint of trade or commerce and by
619 providing adequate penalties for the enforcement of its provisions.

620 Section 23. Section **76-10-3103**, which is renumbered from Section 76-10-913 is
621 renumbered and amended to read:

622 ~~[76-10-913].~~ **76-10-3103. Definitions.**

623 As used in this act:

624 (1) "Attempt to monopolize" means action taken without a legitimate business purpose
625 and with a specific intent of destroying competition or controlling prices to substantially lessen
626 competition, or creating a monopoly, where there is a dangerous probability of creating a
627 monopoly.

628 (2) "Commodity" includes any product of the soil, any article of merchandise or trade
629 or commerce, and any other kind of real or personal property.

630 (3) "Manufacturer" means the producer or originator of any commodity or service.

631 (4) "Service" includes any activity that is performed in whole or in part for the purpose
632 of financial gain including, but not limited to, personal service, professional service, rental,
633 leasing or licensing for use.

634 (5) "Trade or commerce" includes all economic activity involving, or relating to, any
635 commodity, service, or business activity, including the cost of exchange or transportation.

636 Section 24. Section **76-10-3104**, which is renumbered from Section 76-10-914 is
637 renumbered and amended to read:

638 ~~[76-10-914].~~ **76-10-3104. Illegal anticompetitive activities.**

639 (1) Every contract, combination in the form of trust or otherwise, or conspiracy in
640 restraint of trade or commerce is declared to be illegal.

641 (2) It shall be unlawful for any person to monopolize, or attempt to monopolize, or
642 combine or conspire with any other person or persons to monopolize, any part of trade or
643 commerce.

644 Section 25. Section **76-10-3105**, which is renumbered from Section 76-10-915 is
645 renumbered and amended to read:

646 ~~[76-10-915].~~ **76-10-3105. Exempt activities.**

647 (1) This act may not be construed to prohibit:

648 (a) the activities of any public utility to the extent that those activities are subject to
649 regulation by the public service commission, the state or federal department of transportation,
650 the federal energy regulatory commission, the federal communications commission, the
651 interstate commerce commission, or successor agencies;

652 (b) the activities of any insurer, insurance producer, independent insurance adjuster, or
653 rating organization including, but not limited to, making or participating in joint underwriting
654 or reinsurance arrangements, to the extent that those activities are subject to regulation by the
655 commissioner of insurance;

656 (c) the activities of securities dealers, issuers, or agents, to the extent that those
657 activities are subject to regulation under the laws of either this state or the United States;

658 (d) the activities of any state or national banking institution, to the extent that the
659 activities are regulated or supervised by state government officers or agencies under the
660 banking laws of this state or by federal government officers or agencies under the banking laws
661 of the United States;

662 (e) the activities of any state or federal savings and loan association to the extent that
663 those activities are regulated or supervised by state government officers or agencies under the
664 banking laws of this state or federal government officers or agencies under the banking laws of
665 the United States;

666 (f) the activities of a political subdivision to the extent authorized or directed by state
667 law, consistent with the state action doctrine of federal antitrust law; or

668 (g) the activities of an emergency medical service provider licensed under Title 26,
669 Chapter 8a, Utah Emergency Medical Services System Act, to the extent that those activities
670 are regulated by state government officers or agencies under that act.

671 (2) (a) The labor of a human being is not a commodity or article of commerce.

672 (b) Nothing contained in the antitrust laws shall be construed to forbid the existence
673 and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of
674 mutual help and not having capital stock or conducted for profit, or to forbid or restrain
675 individual members of these organizations from lawfully carrying out their legitimate objects;
676 nor may these organizations or membership in them be held to be illegal combinations or
677 conspiracies in restraint of trade under the antitrust laws.

678 (3) (a) As used in this section, an entity is also a municipality if the entity was formed

679 under Title 11, Chapter 13, Interlocal Cooperation Act, prior to January 1, 1981, and the entity
680 is:

- 681 (i) a project entity as defined in Section 11-13-103;
- 682 (ii) an electric interlocal entity as defined in Section 11-13-103; or
- 683 (iii) an energy services interlocal entity as defined in Section 11-13-103.
- 684 (b) The activities of the entities under Subsection (3)(a) are authorized or directed by
685 state law.

686 Section 26. Section **76-10-3106**, which is renumbered from Section 76-10-916 is
687 renumbered and amended to read:

688 ~~[76-10-916]~~. **76-10-3106. Attorney General's powers -- Investigations --**
689 **Institution of actions -- Cooperation.**

690 (1) The attorney general may investigate suspected violations of this act and institute
691 appropriate actions regarding those suspected violations as provided in this act.

692 (2) Any violations of this act which come to the attention of any state government
693 officer or agency shall be reported to the attorney general. All state government officers and
694 agencies shall cooperate with, and assist in, any prosecution for violation of this act.

695 (3) The attorney general may proceed under any antitrust laws in the state or federal
696 courts on behalf of this state, any of its political subdivisions or agencies, or as parens patriae
697 on behalf of natural persons in this state.

698 Section 27. Section **76-10-3107**, which is renumbered from Section 76-10-917 is
699 renumbered and amended to read:

700 ~~[76-10-917]~~. **76-10-3107. Civil antitrust investigations -- Demand for**
701 **production of documents and responses to written interrogatories -- Oral examination --**
702 **Judicial order for compliance -- Confidentiality -- Subpoenas precluded.**

703 (1) When the attorney general has reasonable cause to believe that any person may be
704 in possession, custody, or control of any information relevant to a civil antitrust investigation,
705 he may, prior to the commencement of a civil action thereon, issue and cause to be served upon
706 that person a written civil investigative demand requesting that person to:

- 707 (a) produce the documentary material for inspection, copying, or reproduction by the
708 state where the documents are located or produced;
- 709 (b) give oral testimony under oath, concerning the subject of the investigation;

710 (c) respond to written interrogatories; or
711 (d) furnish any combination of these.
712 (2) (a) Each demand shall state:
713 (i) The nature of the activities under investigation, constituting the alleged antitrust
714 violation, which may result in a violation of this act and the applicable provision of law;
715 (ii) that the recipient is entitled to counsel;
716 (iii) that the documents, materials, or testimony in response to the demand may be used
717 in a civil or criminal proceeding;
718 (iv) that if the recipient does not comply with the demand the Office of the Attorney
719 General may compel compliance by appearance, upon reasonable notice to the recipient, before
720 the district court in the judicial district wherein the recipient resides or does business and only
721 upon a showing before that district court that the requirements of Subsection (7) have been
722 met;
723 (v) that the recipient has the right at any time before the return date of the demand, or
724 within 30 days, whichever period is shorter, to seek a court order determining the validity of
725 the demand; and
726 (vi) that at any time during the proceeding the person may assert any applicable
727 privilege.
728 (b) If the demand is for production of documentary material, it shall also:
729 (i) describe the documentary material to be produced with sufficient definiteness and
730 certainty as to permit the material to be fairly identified;
731 (ii) prescribe return dates that provide a reasonable period of time within which the
732 material demanded may be assembled and made available for inspection and reproduction; and
733 (iii) identify the individual at the attorney general's office to whom the material shall be
734 made available.
735 (c) If the demand is for the giving of oral testimony, it shall also:
736 (i) prescribe the date, time, and place at which oral testimony shall be commenced;
737 (ii) state that a member of the attorney general's office staff shall conduct the
738 examination; and
739 (iii) state that the recording or the transcript of such examination shall be submitted to
740 and maintained by the Office of the Attorney General.

741 (d) If the demand is for responses to written interrogatories, it shall also:
742 (i) state that each interrogatory shall be answered separately and fully in writing and
743 under oath, unless the person objects to the interrogatory, in which event the reasons for
744 objection shall be stated in lieu of an answer;
745 (ii) state that the answers are to be signed by the person making them, and the
746 objections are to be signed by the attorney making them;
747 (iii) identify by name and address the individual at the Office of the Attorney General
748 on whom answers and objections provided under this Subsection (2)(d) are to be served; and
749 (iv) prescribe the date on or before which these answers and objections are to be served
750 on the identified individual.

751 (3) The civil investigative demand may be served upon any person who is subject to
752 the jurisdiction of any Utah court and shall be served upon the person in the manner provided
753 for service of a subpoena.

754 (4) (a) The documents submitted in response to a demand served under this section
755 shall be accompanied by an affidavit, in the form the demand designates, by the person, if a
756 natural person, to whom the demand is directed or, if not a natural person, by a person having
757 knowledge of the facts and circumstances relating to the production.

758 (b) The affidavit shall state that all of the documentary material required by the
759 demand and in the possession, custody, or control of the person to whom the demand is
760 directed has in good faith been produced and made available to the Office of the Attorney
761 General.

762 (c) The affidavit shall identify any demanded documents that are not produced and
763 state the reason why each document was not produced.

764 (5) (a) The examination of any person pursuant to a demand for oral testimony served
765 under this section shall be taken before an officer authorized to administer oaths or affirmations
766 by the laws of the United States or of the place where the examination is held. The officer
767 before whom the testimony is to be taken shall put the witness on oath or affirmation and shall
768 personally, or by someone acting under his direction and in his presence, record the testimony
769 of the witness. If the testimony is taken stenographically, it shall be transcribed and the officer
770 before whom the testimony is taken shall promptly transmit the transcript of the testimony to
771 the Office of the Attorney General.

772 (b) When taking oral testimony, all persons other than personnel from the attorney
773 general's office, the witness, counsel for the witness, and the officer before whom the testimony
774 is to be taken shall be excluded from the place where the examination is held.

775 (c) The oral testimony of any person taken pursuant to a demand served under this
776 section shall be taken in the county where the person resides or transacts business or in any
777 other place agreed upon by the attorney general and the person.

778 (d) When testimony is fully transcribed, the transcript shall be certified by the officer
779 before whom the testimony was taken and submitted to the witness for examination and
780 signing, in accordance with Rule 30(e) of the Utah Rules of Civil Procedure. A copy of the
781 deposition shall be furnished free of charge to each witness upon his request.

782 (e) Any change in testimony recorded by nonstenographic means shall be made in the
783 manner provided in Rule 30 of the Utah Rules of Civil Procedure for changing deposition
784 testimony recorded by nonstenographic means.

785 (f) Any person compelled to appear under a demand for oral testimony under this
786 section may be accompanied, represented, and advised by counsel. Counsel may advise the
787 person, in confidence, either upon the request of the person or upon counsel's own initiative,
788 with respect to any question asked of the person. The person or counsel may object on the
789 record to any question, in whole or in part, and shall briefly state for the record the reason for
790 the objection. An objection may properly be made, received, and entered upon the record when
791 it is claimed that the person is entitled to refuse to answer the question on grounds of any
792 constitutional or other legal right or privilege, including the privilege against
793 self-incrimination. If the person refuses to answer any question, the attorney general may
794 petition the district court for an order compelling the person to answer the question.

795 (g) If any person compelled to appear under a demand for oral testimony or other
796 information pursuant to this section refuses to answer any questions or produce information on
797 grounds of the privilege against self-incrimination, the testimony of that person may be
798 compelled as in criminal cases.

799 (h) Any person appearing for oral examination pursuant to a demand served under this
800 section is entitled to the same fees and mileage which are paid to witnesses in the district courts
801 of the state of Utah. Witness fees and expenses shall be tendered and paid as in any civil
802 action.

803 (6) The providing of any testimony, documents, or objects in response to a civil
804 investigative demand issued pursuant to the provisions of this act shall be considered part of an
805 official proceeding as defined in Section 76-8-501.

806 (7) (a) If a person fails to comply with the demand served upon him under this section,
807 the attorney general may file in the district court of the county in which the person resides, is
808 found, or does business, a petition for an order compelling compliance with the demand.
809 Notice of hearing of the petition and a copy of the petition shall be served upon the person,
810 who may appear in opposition to the petition. If the court finds that the demand is proper, that
811 there is reasonable cause to believe there has been a violation of this act, and that the
812 information sought or document or object demanded is relevant to the violation, it shall order
813 the person to comply with the demand, subject to modifications the court may prescribe.

814 (b) (i) At any time before the return date specified in a demand or within 30 days after
815 the demand has been served, whichever period is shorter, the person who has been served may
816 file a petition for an order modifying or setting aside the demand. This petition shall be filed in
817 the district court in the county of the person's residence, principal office, or place of business,
818 or in the district court in Salt Lake County. The petition shall specify each ground upon which
819 the petitioner relies in seeking the relief sought. The petition may be based upon any failure of
820 the demand to comply with the provisions of this section or upon any constitutional or other
821 legal right or privilege of the petitioner. The petitioner shall serve notice of hearing of the
822 petition and a copy of the petition upon the attorney general. The attorney general may submit
823 an answer to the petition within 30 days after receipt of the petition.

824 (ii) After hearing on the petition described in Subsection (7)(b)(i), and for good cause
825 shown, the court may make any further order in the proceedings that justice requires to protect
826 the person from unreasonable annoyance, embarrassment, oppression, burden, or expense. At
827 any hearing pursuant to this section it is the attorney general's burden to establish that the
828 demand is proper, that there is reasonable cause to believe that there has been a violation of this
829 act, and that the information sought or document or object demanded is relevant to the
830 violation.

831 (8) (a) Any procedure, testimony taken, or material produced under this section shall be
832 kept confidential by the attorney general unless confidentiality is waived in writing by the
833 person who has testified, or produced documents or objects.

834 (b) Notwithstanding any other provision of this section, the attorney general may
835 disclose testimony or documents obtained under this section, without either the consent of the
836 person from whom it was received or the person being investigated, to:

837 (i) any grand jury; and

838 (ii) officers and employees of federal or state law enforcement agencies, provided the
839 person from whom the information, documents, or objects were obtained is notified 20 days
840 prior to disclosure, and the federal or state law enforcement agency certifies that the
841 information will be:

842 (A) maintained in confidence, as required by Subsection (8)(a); and

843 (B) used only for official law enforcement purposes.

844 (9) Use of a civil investigative demand under this action precludes the invocation by
845 the attorney general of Section 77-22-2.

846 Section 28. Section **76-10-3108**, which is renumbered from Section 76-10-918 is
847 renumbered and amended to read:

848 ~~[76-10-918]~~. **76-10-3108. Attorney general may bring action for injunctive**
849 **relief, damages, or civil penalty.**

850 (1) The attorney general may bring an action for appropriate injunctive relief, and for
851 damages or a civil penalty in the name of the state, any of its political subdivisions or agencies,
852 or as parens patriae on behalf of natural persons in this state, for a violation of this act. Actions
853 may be brought under this section regardless of whether the plaintiff dealt directly or indirectly
854 with the defendant. This remedy is an additional remedy to any other remedies provided by
855 law. It may not diminish or offset any other remedy.

856 (2) Any individual who violates this act is subject to a civil penalty of not more than
857 \$100,000 for each violation. Any person, other than an individual, who violates this act is
858 subject to a civil penalty of not more than \$500,000 for each violation.

859 Section 29. Section **76-10-3109**, which is renumbered from Section 76-10-919 is
860 renumbered and amended to read:

861 ~~[76-10-919]~~. **76-10-3109. Person may bring action for injunctive relief**
862 **and damages -- Treble damages -- Recovery of actual damages or civil penalty by state or**
863 **political subdivisions -- Immunity of political subdivisions from damages, costs, or**
864 **attorney fees.**

865 (1) (a) A person who is a citizen of this state or a resident of this state and who is
866 injured or is threatened with injury in his business or property by a violation of the Utah
867 Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the
868 person dealt directly or indirectly with the defendant. This remedy is in addition to any other
869 remedies provided by law. It may not diminish or offset any other remedy.

870 (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three
871 times the amount of damages sustained, plus the cost of suit and a reasonable attorney fees, in
872 addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.

873 (2) (a) If the court determines that a judgment in the amount of three times the damages
874 awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the
875 court shall reduce the amount of judgment to the highest sum that would not cause the
876 defendant's insolvency.

877 (b) The court may not reduce a judgment to an amount less than the amount of
878 damages sustained plus the costs of suit and a reasonable attorney fees.

879 (3) The state or any of its political subdivisions may recover the actual damages it
880 sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief,
881 costs of suit, and reasonable attorney fees.

882 (4) No damages, costs, or attorney fees may be recovered under this section:

883 (a) from any political subdivision;

884 (b) from the official or employee of any political subdivision acting in an official
885 capacity; or

886 (c) against any person based on any official action directed by a political subdivision or
887 its official or employee acting in an official capacity.

888 (5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the
889 defendant establishes and the court determines that in light of all the circumstances, including
890 the posture of litigation and the availability of alternative relief, it would be inequitable not to
891 apply Subsection (4) to a pending case.

892 (6) When a defendant has been sued in one or more actions by both direct and indirect
893 purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a
894 partial or complete defense to a claim for damages that the damages incurred by the plaintiff or
895 plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication

896 of recovery of damages. In an action by indirect purchasers, any damages or settlement
897 amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a
898 defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid
899 duplication of recovery of damages.

900 (7) It shall be presumed, in the absence of proof to the contrary, that the injured
901 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,
902 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the
903 absence of proof to the contrary, that the injured persons who dealt indirectly with the
904 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the
905 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured
906 persons determined by the court as most likely to have absorbed the damages.

907 (8) There is a presumption, in the absence of proof to the contrary and subject to
908 Subsection (7), that each level in a product's or service's distribution chain passed on any and
909 all increments in its cost due to an increase in the cost of an ingredient or a component product
910 or service that was caused by a violation of this chapter. This amount will be presumed, in the
911 absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents,
912 of the ingredient, component product, or service to its first purchaser.

913 (9) The attorney general shall be notified by the plaintiff about the filing of any class
914 action involving antitrust violations that includes plaintiffs from this state. The attorney
915 general shall receive a copy of each filing from each plaintiff. The attorney general may, in his
916 or her discretion, intervene or file amicus briefs in the case, and may be heard on the question
917 of the fairness or appropriateness of any proposed settlement agreement.

918 (10) If, in a class action or parens patriae action filed under this chapter, including the
919 settlement of any action, it is not feasible to return any part of the recovery to the injured
920 plaintiffs, the court shall order the residual funds be applied to benefit the specific class of
921 injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds
922 into the Attorney General Litigation Fund created by Section ~~[76-10-922]~~ 76-10-3114, or both.

923 (11) In any action brought under this chapter, the court shall approve all attorney fees
924 and arrangements for the payment of attorney fees, including contingency fee agreements.

925 Section 30. Section **76-10-3112**, which is renumbered from Section 76-10-920 is
926 renumbered and amended to read:

927 ~~[76-10-920]~~. 76-10-3112. **Fine and imprisonment for violation -- Certain**
928 **vertical agreements excluded -- Nolo contendere.**

929 (1) (a) Any person who violates Section ~~[76-10-914]~~ 76-10-3104 by price fixing, bid
930 rigging, agreeing among competitors to divide customers or territories, or by engaging in a
931 group boycott with specific intent of eliminating competition shall be punished,
932 notwithstanding Sections 76-3-301 and 76-3-302:

933 (i) if an individual, by a fine not to exceed \$100,000 or by imprisonment for an
934 indeterminate time not to exceed three years, or both; or

935 (ii) if by a person other than an individual, a fine not to exceed \$500,000.

936 (b) Subsection (1)(a) may not be construed to include vertical agreements between a
937 manufacturer, its distributors, or their subdistributors dividing customers and territories solely
938 involving the manufacturer's commodity or service where the manufacturer distributes its
939 commodity or service both directly and through distributors or subdistributors in competition
940 with itself.

941 (2) A defendant may plead nolo contendere to a charge brought under this title but only
942 with the consent of the court. Such a plea shall be accepted by the court only after due
943 consideration of the views of the parties and the interest of the public in the effective
944 administration of justice.

945 Section 31. Section **76-10-3113**, which is renumbered from Section 76-10-921 is
946 renumbered and amended to read:

947 ~~[76-10-921]~~. 76-10-3113. **Conviction as prima facie evidence in action for**
948 **injunctive relief or damages.**

949 In any action brought by the state, a final judgment or decree determining that a person
950 has criminally violated this act, other than a judgment entered pursuant to a nolo contendere
951 plea or a decree entered prior to the taking of any testimony, shall be prima facie evidence
952 against that person in any action brought pursuant to ~~[section 76-10-919]~~ Section 76-10-3109,
953 as to all matters with respect to which the judgment or decree would be an estoppel between
954 the parties thereto.

955 Section 32. Section **76-10-3114**, which is renumbered from Section 76-10-922 is
956 renumbered and amended to read:

957 ~~[76-10-922]~~. 76-10-3114. **Attorney General Litigation Fund.**

958 (1) (a) There is created a special revenue fund known as the Attorney General
959 Litigation Fund for the purpose of providing funds to pay for any costs and expenses incurred
960 by the state attorney general in relation to actions under state or federal antitrust, criminal laws,
961 or civil proceedings under Title 13, Chapter 44, Protection of Personal Information Act. These
962 funds are in addition to other funds as may be appropriated by the Legislature to the attorney
963 general for the administration and enforcement of the laws of this state.

964 (b) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall
965 be transferred to the General Fund.

966 (c) The attorney general may expend money from the Attorney General Litigation Fund
967 for the purposes in Subsection (1)(a).

968 (2) (a) All money received by the state or its agencies by reason of any judgment,
969 settlement, or compromise as the result of any action commenced, investigated, or prosecuted
970 by the attorney general, after payment of any fines, restitution, payments, costs, or fees
971 allocated by the court, shall be deposited in the Attorney General Litigation Fund, except as
972 provided in Subsection (2)(b).

973 (b) (i) Any expenses advanced by the attorney general in any of the actions under
974 Subsection (1)(a) shall be credited to the Attorney General Litigation Fund.

975 (ii) Any money recovered by the attorney general on behalf of any private person or
976 public body other than the state shall be paid to those persons or bodies from funds remaining
977 after payment of expenses under Subsection (2)(b)(i).

978 (3) The Division of Finance shall transfer any money remaining in the Antitrust
979 Revolving Account on July 1, 2002, to the Attorney General Litigation Fund created in
980 Subsection (1).

981 Section 33. Section **76-10-3115**, which is renumbered from Section 76-10-923 is
982 renumbered and amended to read:

983 ~~[76-10-923]~~. **76-10-3115. Attorney general to advocate competition.**

984 The attorney general shall have the authority and responsibility to advocate the policy
985 of competition before all political subdivisions of this state and all public agencies whose
986 actions may affect the interests of persons in this state.

987 Section 34. Section **76-10-3116**, which is renumbered from Section 76-10-924 is
988 renumbered and amended to read:

989 ~~[76-10-924]~~. 76-10-3116. Venue of actions by state -- Transfer.

990 Any action brought by the state pursuant to this act shall be brought in any county
991 wherein the defendant resides or does business, or at the option of the defendant, such action
992 shall be transferred, upon motion made within 30 days after commencement of the action, to
993 Salt Lake County.

994 Section 35. Section **76-10-3117**, which is renumbered from Section 76-10-925 is
995 renumbered and amended to read:

996 ~~[76-10-925]~~. 76-10-3117. Statute of limitations.

997 (1) Any action brought by the attorney general pursuant to this act is barred if it is not
998 commenced within four years after the cause of action accrues.

999 (2) Any other action pursuant to this act is barred if it is not commenced within four
1000 years after the cause of action accrues, or within one year after the conclusion of an action
1001 brought by the state pursuant to this act based in whole or in part on any matter complained of
1002 in the subsequent action, whichever is the latter.

1003 Section 36. Section **76-10-3118**, which is renumbered from Section 76-10-926 is
1004 renumbered and amended to read:

1005 ~~[76-10-926]~~. 76-10-3118. Interpretation of act.

1006 The Legislature intends that the courts, in construing this act, will be guided by
1007 interpretations given by the federal courts to comparable federal antitrust statutes and by other
1008 state courts to comparable state antitrust statutes.

1009 Section 37. Section **78B-8-503** is amended to read:

1010 **78B-8-503. Definitions.**

1011 As used in this part:

1012 (1) "Prevail" means to obtain favorable final judgment, the right to all appeals having
1013 been exhausted, on the merits, on substantially all counts or charges in the action and with
1014 respect to the most significant issue or set of issues presented, but does not include the
1015 settlement of any action, either by stipulation, consent decree or otherwise, whether or not
1016 settlement occurs before or after any hearing or trial.

1017 (2) "Reasonable litigation expenses" means court costs, administrative hearing costs,
1018 attorney fees, and witness fees of all necessary witnesses, not in excess of \$25,000 which a
1019 court finds were reasonably incurred in opposing action covered under this part.

1020 (3) "Small business" means a commercial or business entity, including a sole
1021 proprietorship, which does not have more than 250 employees, but does not include an entity
1022 which is a subsidiary or affiliate of another entity which is not a small business.

1023 (4) "State" means any department, board, institution, hospital, college, or university of
1024 the state of Utah or any political subdivision thereof, except with respect to actions brought
1025 under [~~the Utah Antitrust Act, Section 76-10-911, et seq~~] Title 76, Chapter 10, Part 31, Utah
1026 Antitrust Act.

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Office of Legislative Research and General Counsel