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THE
UTAH CODE ANNOTATED
1943



VOLUME 1

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Authority of an Act of the Legislature
Effective January 2, 1943

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BY
STATE OF UTAH

A PROCLAMATION

BY THE

GOVERNOR

WHEREAS, by an Act "Providing for the Compilation, Publication and Annotation of the Statutes of the State of Utah," approved March 22, 1941 (Laws of Utah 1941, Chapter 94), and in pursuance of Section 5 of said Act, that the same shall be in force and be received in all courts and by all judges, public officers, commissions and departments of the state government as evidence of the statute law of the state of Utah and as an authorized compilation of the statutes and codes of Utah upon proclamation by the governor of this publication; and

WHEREAS, the compilation commission having certified that said Code has been published as is provided by law:

NOW, THEREFORE, I, Herbert B. Maw, Governor of the State of Utah, do hereby proclaim the publication of the Utah Code Annotated 1943 and do hereby fix, designate and appoint the 2nd day of January, 1943 as the day on which said Code shall go into effect and be operative, and full faith and credit shall be given the same.



IN TESTIMONY WHEREOF, I hereunto set my hand and caused the Great Seal of the State to be affixed at the Capitol in the city of Salt Lake, on this the 31st day of December, A. D. 1942.

HERBERT B. MAW
GOVERNOR

E. E. MONSON
SECRETARY OF STATE

HONORABLE HERBERT B. MAW, GOVERNOR OF UTAH:

This is to certify that pursuant to Chapter 94 of the Laws of Utah 1941 the undersigned Compilation Commission, created by said Act entered into a contract for the compilation, publication and annotation of the Statutes of the State of Utah to be known as the Utah Code Annotated 1943, with Callaghan and Company of Chicago, Illinois; that said Code has now been completed and published and the same is ready for distribution.

WHEREUNTO we have set our hands this 31st day of December, 1942.

HERBERT B. MAW
GROVER A. GILES
E. A. ROGERS

ATTEST:
L. M. CUMMINGS

PREFACE

This is a compilation of the laws of Utah, made under authority of Chapter 94 of Laws of Utah, 1941, and based upon the Revised Statutes of 1933. It includes all provisions of the 1933 Revision not repealed or expressly held to be unconstitutional, also certain laws relating to drainage and irrigation districts which were not repealed or superseded by the revision for reasons explained in the preface thereto, together with all laws of a general and permanent nature since adopted down to and including the Laws of 1941, Second Special Session.

It is well to note at the outset the distinction between a "revision" and a "compilation" of the laws. Authorization from the legislature to compile the laws confers no authority to include anything not already formally adopted. See *Lyman v. Martin*, 2 U. 136, 141. A revision, on the other hand, is not a mere compilation by the code commissioners, but is an entirely new enactment by the legislature. The enactment by the legislature of the 1933 Revised Statutes gave force and effect to every provision therein the same as if single chapters had been enacted making changes and amendments. *State Tax Commission v. Backman*, 88 U. 424, 433, 55 P.2d 171.

Inasmuch as this is not a revision, but a compilation, the 1933 arrangement by topics and chapters, and the 1933 numbering of sections, have been rigidly retained. Where the legislature, in adding new provisions, has given them official numbering to fit them into the 1933 arrangement, that numbering has been employed in inserting them in this compilation. But where new acts or provisions have been adopted for which the legislature has provided no numbers, a uniform system of decimal numbering has been used by the compilers, beginning in each case with decimal point ten, such as 7-14-3.10 and continuing 7-14-3.11, and so on, which will permit of almost indefinite expansion and insure retention, if desired, of the present numbering system and arrangement over a period of many years. The few new topics which it was found necessary to add, and the various new chapters, have been designated alphabetically, so as to fit them into the numbering system without disrupting it.

This compilation of the Laws of Utah has been annotated entirely anew. The work was done under contract by the editorial staff of Callaghan and Company, law book publishers, of Chicago, Illinois, pursuant to conferences with and suggestions of the members of the Statute Compilation Commission. All reported decisions of the Supreme Court of Utah, from the earliest territorial days to and including Volume 100 of the Utah Reports, were read, and all points of law therein construing or applying any existing provision of the Utah Constitution or laws, or bearing in any worthwhile manner upon the history or meaning of such provisions, were written up and have been placed

under the appropriate provision. Exception has been made to this only in the case of propositions of law which have become so well settled as to be axiomatic, in which instances only a sufficient number of late decisions to authenticate them are cited. The annotations are not in the form of mere indicia of points involved, but are full paragraph recitals of rules and precedents.

The notes of Utah decisions, moreover, are logically arranged, with informative catchlines interspersed to lead the user to particular points and groups of points. These catchlines are numbered, both to facilitate cross-referencing and so that a quick guide to the contents of the annotation can be supplied by an analysis of the subdivisions such as will be found at the commencement of the longer annotations.

Not only Utah decisions are included, but also those of the lower federal courts and of the Supreme Court of the United States, where they construe or apply Utah law.

The origin and history of the various statutory provisions are shown, as in the 1933 Revision, by parenthetical notations at the end of each section, and, in addition, by "History" note paragraphs at the commencement of the various annotations whenever anything of substantial importance has occurred to them since the revision of 1933. The cross-references have been entirely rechecked and revised, with new ones added where appropriate to call attention to new enactments. If there is a closely similar statutory provision in California, Idaho, Montana or Iowa, the citation thereof is given under a note heading "Comparable Provisions" immediately following the "history" of the particular section. The statutes of the states named were exhaustively and individually checked for this purpose. In addition, where the editors could ascertain from cases read or sources available that a Utah provision was adopted from or is like the law of any state other than those mentioned above, that fact is also noted. With respect to Uniform Laws, notation is made, under the first section, of all other states which have adopted the particular act at date of publication.

The more important decisions from California, Idaho, Montana and Iowa have been written up and added to the end of the Utah case annotations wherever any of those states have closely similar provisions and the Utah decisions do not appear to have passed upon major points that might arise. An exception was made in this regard as to the various Uniform Acts. Inasmuch as it was impossible to cover the field of foreign decisions with regard to such matters as negotiable instruments, sales of personal property, and the like, and those from any particular foreign jurisdiction have no more weight than from any other, we have not included such decisions.

Lists of titles of related annotations to be found in American Law Reports, up to and including Volume 137 of that series, are appended at the end of each annotation. This, we believe, will be found to be a great convenience in leading the user to a still wider source of foreign decisions relating to any topic which he may have in mind.

In addition to the foregoing features of the new annotations, all the leading law reviews of the country were searched for comments concern-

ing Utah decisions, and references to them have been added to the Utah case citations wherever pertinent. Notations have likewise been added in connection with overruled and overruling decisions, and citations given to later Utah decisions distinguishing or criticizing earlier ones from which points appear in the annotations.

The index has been thoroughly remade, with all new legislation, of course, included within its scope.

It would not be proper to close this preface without acknowledging that to Mr. Richard J. Hogan of Salt Lake City, chairman of a special committee of the Utah State Bar, the other members of which were Mr. Clair M. Senior and Mr. Grover A. Giles, the credit is due for the preparation of the bill providing for this 1943 compilation, and that it was due to the untiring efforts of Mr. Hogan and his committee that the bill was finally passed by the legislature.

Acknowledgment should also be made to Mr. L. M. Cummings, Clerk of the Supreme Court and Secretary of the Utah State Bar who served as Secretary of the Compilation Commission, and attended to all of the details of the work of the Commission including the preparation of the bids and drawing of the contract.

The members of the compilation commission, who were charged with the duty of having this compilation prepared, are the Honorable Herbert B. Maw, Governor of the State of Utah, the Honorable Grover A. Giles, attorney general of the State of Utah, and Mr. E. A. Rogers, president of the Utah State Bar.

No funds appropriated to the commission were expended for any purpose except to the publishers under the contract.

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