

1 OCCUPATIONS AND PROFESSIONS AMENDMENTS

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Michael T. Morley

5 Senate Sponsor: J. Stuart Adams

6

7 LONG TITLE

8 General Description:

9 This bill amends provisions of Title 58, Occupations and Professions, regarding the
10 administration and enforcement of licensing laws and related provisions.

11 Highlighted Provisions:

12 This bill:

13 ▶ provides that members of licensing boards can continue to serve for a limited time
14 period after their terms have expired until their successors are appointed and
15 qualified;

16 ▶ provides for notification by an applicant or licensee to the Division of Occupational
17 and Professional Licensing regarding name and address changes;

18 ▶ provides the division with fine and citation authority for the unlicensed practice of a
19 profession or the hiring of unlicensed individuals;

20 ~~H→ [→ modifies unprofessional conduct provisions and unlawful conduct penalty~~
21 ~~provisions;] ←H~~

22 ▶ clarifies licensure by endorsement provisions for professional engineers,
23 professional structural engineers, and professional land surveyors;

24 ▶ modifies the qualifications for licensure as an advanced practice registered nurse;

25 ▶ modifies the definition of practice of massage therapy for purposes of the Massage
26 Practice Therapy Act;

27 ▶ modifies continuing education requirement provisions for licensed elevator

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28 mechanics and elevator contract licensees;

29 ▶ makes technical changes to vocational rehabilitation counselor licensing provisions;

30 ▶ modifies the term of license provisions; and

31 ▶ makes certain technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **38-11-206**, as last amended by Laws of Utah 2009, Chapter 183

39 **58-1-201**, as last amended by Laws of Utah 2010, Chapters 286 and 324

40 **58-1-401**, as last amended by Laws of Utah 2010, Chapter 372

41 **58-1-404**, as last amended by Laws of Utah 2008, Chapter 382

42 ~~§→ [58-1-501, as last amended by Laws of Utah 2010, Chapter 180] ←§~~

43 **58-1-502**, as enacted by Laws of Utah 1993, Chapter 297

44 **58-22-302**, as last amended by Laws of Utah 2009, Chapter 183

45 **58-31b-302**, as last amended by Laws of Utah 2009, Chapter 183

46 **58-47b-102**, as last amended by Laws of Utah 2006, Chapter 109

47 **58-55-302.7**, as enacted by Laws of Utah 2010, Chapter 57

48 **58-55-303**, as last amended by Laws of Utah 2010, Chapters 53, 57, and 227

49 **58-78-302**, as enacted by Laws of Utah 2009, Chapter 122

50 **58-78-303**, as enacted by Laws of Utah 2009, Chapter 122

51 **58-83-401**, as enacted by Laws of Utah 2010, Chapter 180

51a **§→ 63G-4-102, as renumbered and amended by Laws of Utah 2008, Chapter 382 ←§**

52 **78B-6-205**, as renumbered and amended by Laws of Utah 2008, Chapter 3

53 ENACTS:

54 **58-1-301.7**, Utah Code Annotated 1953

55 REPEALS:

56 **58-39a-1**, as enacted by Laws of Utah 1991, Chapter 279

57 **58-39a-2**, as last amended by Laws of Utah 1993, Chapter 297

58 **58-39a-3**, as last amended by Laws of Utah 1993, Chapter 297

400 (c) (i) A licensee whose diversion agreement has been terminated pursuant to
 401 Subsection (15)(b) is entitled, upon request, to a posttermination hearing to challenge the
 402 termination of the diversion agreement.

403 (ii) The request shall be considered a request for agency action and shall comply with
 404 the requirements of Subsection 63G-4-201(3).

405 (iii) The division shall uphold the termination of the diversion agreement if it finds
 406 that:

407 (A) the licensee violated the diversion agreement; and

408 (B) it is in the best interest of the public to terminate the diversion agreement.

409 (16) The administrative statute of limitations for taking disciplinary action described in
 410 Subsection 58-1-401[(5)](6) shall be tolled during a diversion program.

411 **H→ [Section 6. Section 58-1-501 is amended to read:**

412 ~~58-1-501. Unlawful and unprofessional conduct.~~

413 ~~(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful~~
 414 ~~under this title and includes:~~

415 ~~(a) practicing or engaging in, representing oneself to be practicing or engaging in, or~~
 416 ~~attempting to practice or engage in any occupation or profession requiring licensure under this~~
 417 ~~title if the person is:~~

418 ~~(i) not licensed to do so or not exempted from licensure under this title; or~~

419 ~~(ii) restricted from doing so by a suspended, revoked, restricted, temporary,~~
 420 ~~probationary, or inactive license;~~

421 ~~(b) impersonating another licensee or practicing an occupation or profession under a~~
 422 ~~false or assumed name, except as permitted by law;~~

423 ~~(c) knowingly employing any other person to practice or engage in or attempt to~~
 424 ~~practice or engage in any occupation or profession licensed under this title if the employee is~~
 425 ~~not licensed to do so under this title;~~

426 ~~(d) knowingly permitting the person's authority to practice or engage in any occupation~~
 427 ~~or profession licensed under this title to be used by another, except as permitted by law;~~

428 ~~(e) obtaining a passing score on a licensure examination, applying for or obtaining a~~
 429 ~~license, or otherwise dealing with the division or a licensing board through the use of fraud,~~
 430 ~~forgery, or intentional deception, misrepresentation, misstatement, or omission; or~~

431 ~~¶~~ (f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a
432 drug or device to a person located in this state:

433 ~~—— (A) without prescriptive authority conferred by a license issued under this title, or by~~
434 ~~an exemption to licensure under this title; or~~

435 ~~—— (B) with prescriptive authority conferred by an exception issued under this title or a~~
436 ~~multistate practice privilege recognized under this title, if the prescription was issued without~~
437 ~~first obtaining information, in the usual course of professional practice, that is sufficient to~~
438 ~~establish a diagnosis, to identify underlying conditions, and to identify contraindications to the~~
439 ~~proposed treatment; and~~

440 ~~—— (ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call~~
441 ~~or cross coverage situation, provided that the person who issues the prescription has~~
442 ~~prescriptive authority conferred by a license under this title, or is exempt from licensure under~~
443 ~~this title.~~

444 ~~—— (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined~~
445 ~~as unprofessional conduct under this title or under any rule adopted under this title and~~
446 ~~includes:~~

447 ~~—— (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order~~
448 ~~regulating an occupation or profession under this title;~~

449 ~~—— (b) violating, or aiding or abetting any other person to violate, any generally accepted~~
450 ~~professional or ethical standard applicable to an occupation or profession regulated under this~~
451 ~~title;~~

452 ~~—— (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea~~
453 ~~of guilty or nolo contendere which is held in abeyance pending the successful completion of~~
454 ~~probation with respect to a crime of moral turpitude or any other crime that, when considered~~
455 ~~with the functions and duties of the occupation or profession for which the license was issued~~
456 ~~or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely~~
457 ~~or competently practice the occupation or profession;~~

458 ~~—— (d) engaging in conduct that results in disciplinary action, including reprimand,~~
459 ~~censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory~~
460 ~~authority having jurisdiction over the licensee or applicant in the same occupation or profession~~
461 ~~if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary~~ ¶

462 ~~H~~→proceedings under Section 58-1-401;

463 ~~—— (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar~~

464 ~~chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the~~

465 ~~ability of the licensee or applicant to safely engage in the occupation or profession;~~

466 ~~—— (f) practicing or attempting to practice an occupation or profession regulated under this~~

467 ~~title despite being physically or mentally unfit to do so;~~

468 ~~—— (g) practicing or attempting to practice an occupation or profession regulated under this~~

469 ~~title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;~~

470 ~~—— (h) practicing or attempting to practice an occupation or profession requiring licensure~~

471 ~~under this title by any form of action or communication which is false, misleading, deceptive,~~

472 ~~or fraudulent;~~

473 ~~—— (i) practicing or attempting to practice an occupation or profession regulated under this~~

474 ~~title beyond the scope of the licensee's competency, abilities, or education;~~

475 ~~—— (j) practicing or attempting to practice an occupation or profession regulated under this~~

476 ~~title beyond the scope of the licensee's license;~~

477 ~~—— (k) verbally, physically, mentally, or sexually abusing or exploiting any person through~~

478 ~~conduct connected with the licensee's practice under this title or otherwise facilitated by the~~

479 ~~licensee's license;~~

480 ~~—— (l) acting as a supervisor without meeting the qualification requirements for that~~

481 ~~position that are defined by statute or rule;~~

482 ~~—— (m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug~~

483 ~~or device:~~

484 ~~—— (i) without first obtaining information in the usual course of professional practice, that~~

485 ~~is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to~~

486 ~~the proposed treatment; or~~

487 ~~—— (ii) with prescriptive authority conferred by an exception issued under this title, or a~~

488 ~~multi-state practice privilege recognized under this title, if the prescription was issued without~~

489 ~~first obtaining information, in the usual course of professional practice, that is sufficient to~~

490 ~~establish a diagnosis, to identify underlying conditions, and to identify contraindications to the~~

491 ~~proposed treatment; [or]~~

492 ~~—— (n) failing to notify law enforcement of a confirmed fraudulent attempt to fill a ~~←~~ ~~fi~~~~

493 prescription; or

494 ~~— [(n)] (o) violating a provision of Section 58-1-501.5.] ←H~~

495 Section ~~H~~→ [7] 6 ←H . Section 58-1-502 is amended to read:

496 **58-1-502. Unlawful conduct -- Penalties.**

497 (1) Unless otherwise specified in this title, [any] a person who violates the unlawful
498 conduct provisions defined in this title is guilty of a class A misdemeanor.

499 (2) (a) If upon inspection or investigation, the division concludes that a person has
500 violated Subsection 58-1-501(1)(a) or (c) or any rule or order issued with respect to those
501 subsections and that disciplinary action is appropriate, the director or the director's designee
502 from within the division shall promptly:

503 (i) issue a citation to the person according to this section and any pertinent rules;

504 (ii) attempt to negotiate a stipulated settlement; or

505 (iii) notify the person to appear before an adjudicative proceeding conducted under
506 Title 63G, Chapter 4, Administrative Procedures Act.

507 (b) (i) The division may assess a fine under this Subsection (2) against a person who
508 violates Subsection 58-1-501(1)(a) or (c) or any rule or order issued with respect to those
509 subsections as evidenced by:

510 (A) an uncontested citation;

511 (B) a stipulated settlement; or

512 (C) a finding of a violation in an adjudicative proceeding.

513 (ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i),
514 order the person to cease and desist from violating Subsection 58-1-501(1)(a) or (c) or any rule
515 or order issued with respect to this section.

516 (c) Except for a cease and desist order, the division may not assess the licensure
517 sanctions cited in Section 58-1-401 through a citation.

518 (d) A citation shall:

519 (i) be in writing;

520 (ii) describe with particularity the nature of the violation, including a reference to the
521 provision of the chapter, rule, or order alleged to have been violated;

522 (iii) clearly state that the recipient must notify the division in writing within 20
523 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing

555 assistance and advice to the director in an action to collect the penalty.

556 (c) A court may award reasonable attorney fees and costs to the division in an action

557 brought by the division to enforce the provisions of this section.

558 Section ~~H~~→ [8] 7 ←~~H~~ . Section 58-22-302 is amended to read:

559 **58-22-302. Qualifications for licensure.**

560 (1) Each applicant for licensure as a professional engineer shall:

561 (a) submit an application in a form prescribed by the division;

562 (b) pay a fee determined by the department under Section 63J-1-504;

563 (c) provide satisfactory evidence of good moral character;

564 (d) (i) have graduated and received a bachelors or masters degree from an engineering
565 program meeting criteria established by rule by the division in collaboration with the board; or

566 (ii) have completed the Transportation Engineering Technology and Fundamental
567 Engineering College Program prior to July 1, 1998, under the direction of the Utah Department
568 of Transportation and as certified by the Utah Department of Transportation;

569 (e) have successfully completed a program of qualifying experience established by rule
570 by the division in collaboration with the board;

571 (f) have successfully passed examinations established by rule by the division in
572 collaboration with the board; and

573 (g) meet with the board or representative of the division upon request for the purpose
574 of evaluating the applicant's qualification for licensure.

575 (2) Each applicant for licensure as a professional structural engineer shall:

576 (a) submit an application in a form prescribed by the division;

577 (b) pay a fee determined by the department under Section 63J-1-504;

578 (c) provide satisfactory evidence of good moral character;

579 (d) have graduated and received an earned bachelors or masters degree from an
580 engineering program meeting criteria established by rule by the division in collaboration with
581 the board;

582 (e) have successfully completed three years of licensed professional engineering
583 experience established by rule by the division in collaboration with the board, except that prior
584 to January 1, 2009, an applicant for licensure may submit a signed affidavit in a form
585 prescribed by the division stating that the applicant is currently engaged in the practice of

617 (ii) having successfully passed an examination established by rule by the division in
618 collaboration with the board; and

619 (iii) full-time employment as a principal for at least five of the last seven years
620 immediately preceding the date of the application as a:

621 (A) licensed professional engineer[;] for licensure as a professional engineer;

622 (B) licensed professional structural engineer[;] for licensure as a structural engineer; or

623 (C) licensed professional land surveyor [as a principal for at least five of the last seven
624 years immediately preceding the date of the application] for licensure as a professional land
625 surveyor; and

626 (e) meet with the board or representative of the division upon request for the purpose
627 of evaluating the applicant's qualifications for license.

628 (5) The rules made to implement this section shall be in accordance with Title 63G,
629 Chapter 3, Utah Administrative Rulemaking Act.

630 Section ~~H~~→ [9] § ~~H~~ . Section **58-31b-302** is amended to read:

631 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
632 **checks.**

633 (1) An applicant for certification as a medication aide shall:

634 (a) submit an application to the division on a form prescribed by the division;

635 (b) pay a fee to the division as determined under Section 63J-1-504;

636 (c) have a high school diploma or its equivalent;

637 (d) have a current certification as a nurse aide, in good standing, from the Department
638 of Health;

639 (e) have a minimum of 2,000 hours of experience within the two years prior to
640 application, working as a certified nurse aide in a long-term care facility;

641 (f) obtain letters of recommendation from a long-term care facility administrator and
642 one licensed nurse familiar with the applicant's work practices as a certified nurse aide;

643 (g) be in a condition of physical and mental health that will permit the applicant to
644 practice safely as a medication aide certified;

645 (h) have completed an approved education program or an equivalent as determined by
646 the division in collaboration with the board;

647 (i) have passed the examinations as required by division rule made in collaboration

741 (ii) if the person is not licensed under this chapter, the person may not file an
 742 application for licensure under this chapter any sooner than five years after having completed
 743 the conditions of the sentence or plea agreement.

744 Section ~~H~~→ [10] 9 ←~~H~~ . Section **58-47b-102** is amended to read:

745 **58-47b-102. Definitions.**

746 In addition to the definitions in Section 58-1-102, as used in this chapter:

747 (1) "Board" means the Board of Massage Therapy created in Section 58-47b-201.

748 (2) "Breast" means the female mammary gland and does not include the muscles,
 749 connective tissue, or other soft tissue of the upper chest.

750 (3) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the
 751 muscular system.

752 (4) "Massage apprentice" means an individual licensed under this chapter as a massage
 753 apprentice to work under the direct supervision of a licensed massage therapist.

754 (5) "Massage therapist" means an individual licensed under this chapter as a massage
 755 therapist.

756 (6) "Practice of massage therapy" means:

757 (a) the examination, assessment, and evaluation of the soft tissue structures of the body
 758 for the purpose of devising a treatment plan to promote homeostasis;

759 (b) the systematic manual or mechanical manipulation of the soft tissue of the body for
 760 the ~~therapeutic~~ purpose of:

761 (i) promoting the health and well-being of a client;

762 (ii) enhancing the circulation of the blood and lymph;

763 (iii) relaxing and lengthening muscles;

764 (iv) relieving pain;

765 (v) restoring metabolic balance; ~~and~~

766 (vi) achieving homeostasis; and

767 (vii) recreational or other purposes;

768 (c) the use of the hands or a mechanical or electrical apparatus in connection with this
 769 Subsection (6);

770 (d) the use of rehabilitative procedures involving the soft tissue of the body;

771 (e) range of motion or movements without spinal adjustment as set forth in Section

772 58-73-102;

773 (f) oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and
774 cabinet baths;

775 (g) manual traction and stretching exercise;

776 (h) correction of muscular distortion by treatment of the soft tissues of the body;

777 (i) counseling, education, and other advisory services to reduce the incidence and
778 severity of physical disability, movement dysfunction, and pain;

779 (j) similar or related activities and modality techniques; and

780 (k) the practice described in this Subsection (6) on an animal to the extent permitted
781 by:

782 (i) Subsection 58-28-307(12);

783 (ii) the provisions of this chapter; and

784 (iii) division rule.

785 (7) "Soft tissue" means the muscles and related connective tissue.

786 (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.

787 (9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and as
788 may be further defined by division rule.

789 Section ~~H~~ → [H] 10 ← ~~H~~ . Section 58-55-302.7 is amended to read:

790 **58-55-302.7. Continuing education requirements for electricians, elevator
791 mechanics, and plumbers.**

792 (1) As used in this section:

793 (a) "Licensed electrician" means an individual licensed under this chapter as an
794 apprentice electrician, journeyman electrician, master electrician, residential journeyman
795 electrician, or residential master electrician.

796 (b) "Licensed elevator mechanic" means an individual licensed under this chapter as an
797 elevator mechanic.

798 [~~b~~] (c) "Licensed plumber" means an individual licensed under this chapter as an
799 apprentice plumber, journeyman plumber, master plumber, residential journeyman plumber, or
800 residential master plumber.

801 (2) Beginning December 1, 2010, during each two-year renewal cycle established by
802 rule under Subsection 58-55-303(1):

803 (a) a licensed electrician shall complete 16 hours of continuing education under the
804 continuing education program established under this section; [~~and~~]

805 (b) a licensed plumber shall complete 12 hours of continuing education under the
806 continuing education program established under this section[~~;~~]; and

807 (c) a licensed elevator mechanic shall complete eight hours of continuing education
808 under the continuing education program established under this section.

809 (3) The commission shall, with the concurrence of the division, establish by rule:

810 (a) a continuing education program for licensed electricians; [~~and~~]

811 (b) a continuing education program for licensed elevator mechanics; and

812 [~~(b)~~] (c) a continuing education program for licensed plumbers.

813 (4) The division may contract with a person to establish and maintain a continuing
814 education registry to include:

815 (a) an online application for a continuing education course provider to apply to the
816 division for approval of the course for inclusion in the continuing education program;

817 (b) a list of courses that the division has approved for inclusion in the continuing
818 education program; and

819 (c) a list of courses that:

820 (i) a licensed electrician, licensed elevator mechanic, or licensed plumber has
821 completed under the continuing education program; and

822 (ii) the licensed electrician, licensed elevator mechanic, or licensed plumber may
823 access to monitor compliance with the continuing education requirement under Subsection (2).

824 (5) The division may charge a fee, established by the division under Section 63J-1-504,
825 to administer the requirements of this section.

826 Section ~~H~~→ [12] 11 ←~~H~~ . Section **58-55-303** is amended to read:

827 **58-55-303. Term of license -- Expiration -- Renewal.**

828 (1) (a) Each license issued under this chapter shall be issued in accordance with a
829 two-year renewal cycle established by rule.

830 (b) The division may by rule extend or shorten a renewal period by as much as one year
831 to stagger the renewal cycle it administers.

832 (2) At the time of renewal, the licensee shall show satisfactory evidence of:

833 (a) continuing financial responsibility as required under Section 58-55-306;

834 (b) for a contractor licensee, completion of six hours of approved continuing education,
835 as required in Section 58-55-302.5; and

836 (c) if the licensee is an apprentice electrician or plumber, journeyman electrician or
837 plumber, master electrician or plumber, residential journeyman electrician or plumber, or
838 residential master electrician or plumber, completion of the number of hours of continuing
839 education specified under Section 58-55-302.7.

840 (3) Each license automatically expires on the expiration date shown on the license
841 unless the licensee renews the license in accordance with Section 58-1-308.

842 (4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking
843 to renew or reinstate a license.

844 (5) In addition to any other requirements imposed by law, if a license has been
845 suspended or revoked for any reason, the applicant:

846 (a) shall pay in full all fines imposed by the division;

847 (b) resolve any outstanding citations or disciplinary actions with the division;

848 (c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution;

849 (d) complete a new financial responsibility review as required under Section
850 58-55-306, using only titled assets; and

851 (e) pay in full any reimbursement amount as provided in Title 38, Chapter 11,
852 Residence Lien Restriction and Lien Recovery Fund Act.

853 ~~[(6) At the time of license renewal, each elevator contract licensee and elevator
854 mechanic licensee shall show satisfactory evidence of having completed eight hours of
855 approved professional education during the last year of a two-year period in accordance with
856 standards defined by rule by the division in accordance with Title 63G, Chapter 3, Utah
857 Administrative Rulemaking Act.]~~

858 Section ~~H~~→ [13] 12 ←~~H~~ . Section 58-78-302 is amended to read:

859 **58-78-302. Qualifications for licensure -- Licensure by credential.**

860 (1) Except as provided in Subsection ~~[(4)]~~ (2), an applicant for licensure as a
861 vocational rehabilitation counselor under this chapter shall:

862 (a) submit an application in a form as prescribed by the division;

863 (b) pay a fee determined by the department under Section 63J-1-504 to recover the
864 costs of administering licensing requirements relating to vocational rehabilitation counselors;

865 (c) be of good moral character;

866 (d) provide satisfactory evidence of having earned a master's degree in rehabilitation
867 counseling or a related field;

868 (e) provide satisfactory evidence of having 4,000 hours of disability related work
869 experience under the supervision of a licensed vocational rehabilitation counselor, except as
870 otherwise provided in Subsection (2); and

871 (f) ~~[after January 1, 2011,]~~ meet the examination requirement established by rule by the
872 division in collaboration with the board.

873 ~~[(2) Beginning January 1, 2010, and ending December 31, 2010, an applicant is not
874 required to verify that the 4,000 hours of work experience required under Subsection (1)(e) was
875 done under the supervision of a vocational rehabilitation counselor licensed under this chapter.]~~

876 ~~[(3) An applicant may satisfy the requirement of Subsection (1)(d) if, prior to January
877 1, 2011, the applicant provides satisfactory evidence of:]~~

878 ~~[(a) having earned a bachelor's degree from an accredited institution;]~~

879 ~~[(b) at least 10 years experience in vocational rehabilitation counseling or a disability
880 related field;]~~

881 ~~[(c) currently practicing vocational rehabilitation counseling in Utah; and]~~

882 ~~[(d) holding a national certification as a:]~~

883 ~~[(i) Certified Rehabilitation Counselor;]~~

884 ~~[(ii) Certified Vocational Evaluator; or]~~

885 ~~[(iii) Certified Disability Management Specialist.]~~

886 ~~[(4)]~~ (2) The division may issue a license under this chapter to an individual who is
887 licensed in another state or jurisdiction to practice vocational rehabilitation counseling if the
888 division finds that the other state or jurisdiction has substantially the same or higher licensure
889 requirements as this state.

890 Section ~~H~~ → [14] 13 ← ~~H~~ . Section 58-78-303 is amended to read:

891 **58-78-303. Term of license -- Expiration -- Renewal.**

892 (1) The division shall issue each license under this chapter in accordance with ~~[an~~
893 ~~annual]~~ a two-year renewal cycle established by rule.

894 (2) Each license automatically expires on the expiration date shown on the license
895 unless renewed by the licensee in accordance with Section 58-1-308.

896 (3) Each person holding a license under this chapter as a vocational rehabilitation
897 counselor shall complete in each period of licensure a program of qualifying continuing
898 professional education in accordance with standards defined by rule.

899 Section ~~H~~→ [15] 14 ←~~H~~ . Section **58-83-401** is amended to read:

900 **58-83-401. Grounds for denial of license -- Disciplinary proceedings --**
901 **Termination of authority to prescribe -- Immediate and significant danger.**

902 (1) Grounds for refusing to issue a license to an applicant, for refusing to renew the
903 license of a licensee, for revoking, suspending, restricting, or placing on probation the license
904 of a licensee, for issuing a public [~~or private~~] reprimand to a licensee, and for issuing a cease
905 and desist order:

906 (a) shall be in accordance with Section 58-1-401; and

907 (b) includes:

908 (i) prescribing, dispensing, or facilitating the prescribing or dispensing of a drug not
909 approved by the board under Section 58-83-306; or

910 (ii) any other violation of this chapter.

911 (2) The termination or expiration of a license under this chapter for any reason does not
912 limit the division's authority to start or continue any investigation or adjudicative proceeding.

913 (3) (a) Because of the working business relationship between and among the online
914 prescriber, the Internet facilitator, and the online contract pharmacy, each entity's ability to
915 comply with this chapter may depend in some respects on the actions of the others.

916 (b) It is possible that a particular action or inaction by the online prescriber, the Internet
917 facilitator, or the online contract pharmacy could have the effect of causing the other licensed
918 entities to be out of compliance with this chapter, and each entity may, therefore, be held
919 accountable for any related party's non-compliance, if the party knew or reasonably should
920 have known of the other person's non-compliance.

921 (4) (a) An online prescriber may lose the practitioner's professional license to prescribe
922 any drug under this title if the online prescriber knew or reasonably should have known that the
923 provisions of this chapter were violated by the online prescriber, the Internet facilitator, or the
924 online contract pharmacy.

925 (b) It is not a defense to an alleged violation under this chapter that the alleged
926 violation was a result of an action or inaction not by the charged party but by the related online

927 prescriber, the online contract pharmacy, or the Internet facilitator.

928 (5) The following actions may result in an immediate suspension of the online
 929 prescriber's license, the online contract pharmacy's license, or the Internet facilitator's license,
 930 and each is considered an immediate and significant danger to the public health, safety, or
 931 welfare requiring immediate action by the division pursuant to Section 63G-4-502 to terminate
 932 the delivery of online pharmaceutical services by the licensee:

933 (a) online prescribing, dispensing, or facilitation with respect to:

934 (i) a person under the age of 18 years;

935 (ii) a legend drug not authorized by the division in accordance with Section 58-83-306;

936 and

937 (iii) any controlled substance;

938 (b) violating this chapter after having been given reasonable opportunity to cure the
 939 violation;

940 (c) using the name or official seal of the state, the Utah Department of Commerce, or
 941 the Utah Division of Occupational and Professional Licensing, or their boards, in an
 942 unauthorized manner; or

943 (d) failing to respond to a request from the division within the time frame requested
 944 for:

945 (i) an audit of the website; or

946 (ii) records of the online prescriber, the Internet facilitator, or the online contract
 947 pharmacy.

947a **§→ Section 16. Section 63G-4-102 is amended to read:**

947b **63G-4-102. Scope and applicability of chapter.**

947c **(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute**
 947d **superseding provisions of this chapter by explicit reference to this chapter, the provisions of**
 947e **this chapter apply to every agency of the state and govern:**

947f **(a) state agency action that determines the legal rights, duties, privileges, immunities,**
 947g **or other legal interests of an identifiable person, including agency action to grant, deny,**
 947h **revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and**

947i **(b) judicial review of the action.**

947j **(2) This chapter does not govern:**

947k **(a) the procedure for making agency rules, or judicial review of the procedure or rules;**

947l **(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive**
 947m **a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the ←§**

947n **§→** issuance of a tax assessment, except that this chapter governs an agency action commenced
 947o by a taxpayer or by another person authorized by law to contest the validity or correctness of
 947p the action;

947q (c) state agency action relating to extradition, to the granting of a pardon or parole, a
 947r commutation or termination of a sentence, or to the rescission, termination, or revocation of
 947s parole or probation, to the discipline of, resolution of a grievance of, supervision of,
 947t confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
 947u State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
 947v of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
 947w judicial review of the action;

947x (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
 947y student or teacher in a school or educational institution, or judicial review of the action;

947z (e) an application for employment and internal personnel action within an agency
 947aa concerning its own employees, or judicial review of the action;

947ab (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
 947ac Occupational Safety and Health Act, and Title 58, { ~~Chapter 3a, Architects Licensing Act,~~
 947ad ~~Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing~~
 947ae ~~Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and~~
 947af ~~Professional Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act,~~
 947ag ~~Chapter 55, Utah Construction Trades Licensing Act, Chapter 63, Security Personnel~~
 947ah ~~Licensing Act, and Chapter 76, Professional Geologist Licensing Act} Division of
 947ai Occupational and Professional Licensing Act , except that this chapter governs an agency
 947aj action commenced by the employer, licensee, or other person authorized by law to contest the
 947ak validity or correctness of the citation or assessment;~~

947al (g) state agency action relating to management of state funds, the management and
 947am disposal of school and institutional trust land assets, and contracts for the purchase or sale of
 947an products, real property, supplies, goods, or services by or for the state, or by or for an agency
 947ao of the state, except as provided in those contracts, or judicial review of the action;

947ap (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of
 947aq Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
 947ar by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
 947as Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or
 947at judicial review of the action;

947au (i) the initial determination of a person's eligibility for unemployment benefits, ←**§**

- 947av **§→ the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2,**
 947aw **Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the**
 947ax **initial determination of a person's unemployment tax liability;**
- 947ay (j) **state agency action relating to the distribution or award of a monetary grant to or**
 947az **between governmental units, or for research, development, or the arts, or judicial review of the**
 947ba **action;**
- 947bb (k) **the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah**
 947bc **Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,**
 947bd **Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,**
 947be **Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,**
 947bf **Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7,**
 947bg **Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act,**
 947bh **except that this chapter governs an agency action commenced by a person authorized by law to**
 947bi **contest the validity or correctness of the notice or order;**
- 947bj (l) **state agency action, to the extent required by federal statute or regulation, to be**
 947bk **conducted according to federal procedures;**
- 947bl (m) **the initial determination of a person's eligibility for government or public**
 947bm **assistance benefits;**
- 947bn (n) **state agency action relating to wildlife licenses, permits, tags, and certificates of**
 947bo **registration;**
- 947bp (o) **a license for use of state recreational facilities;**
- 947bp1 (p) **state agency action under**
 947bq **Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in**
 947br **Section 63G-2-603;**
- 947bs (q) **state agency action relating to the collection of water commissioner fees and**
 947bt **delinquency penalties, or judicial review of the action;**
- 947bu (r) **state agency action relating to the installation, maintenance, and repair of**
 947bv **headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other**
 947bw **water measuring devices, or judicial review of the action;**
- 947bx (s) **the issuance and enforcement of an initial order under Section 73-2-25;**
- 947by (t) (i) **a hearing conducted by the Division of Securities under Section 61-1-11.1; and**
 947bz (ii) **an action taken by the Division of Securities pursuant to a hearing conducted under**
 947ca **Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange**
 947cb **of securities described in Subsection 61-1-11.1(1); and**
- 947cc (u) **state agency action relating to water well driller licenses, water well ←§**

947cd **§→ drilling permits, water well driller registration, or water well drilling construction ,**
947ce **standards or judicial review of the action.**

947cf **(3) This chapter does not affect a legal remedy otherwise available to:**

947cg **(a) compel an agency to take action; or**

947ch **(b) challenge an agency's rule.**

947ci **(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative**
947cj **proceeding, or the presiding officer during an adjudicative proceeding from:**

947ck **(a) requesting or ordering a conference with parties and interested persons to:**

947cl **(i) encourage settlement;**

947cm **(ii) clarify the issues;**

947cn **(iii) simplify the evidence;**

947co **(iv) facilitate discovery; or**

947cp **(v) expedite the proceeding; or**

947cq **(b) granting a timely motion to dismiss or for summary judgment if the requirements**
947cr **of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,**
947cs **except to the extent that the requirements of those rules are modified by this chapter.**

947ct **(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by**
947cu **this chapter, except as explicitly provided in that section.**

947cv **(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is**
947cw **governed by this chapter.**

947cx **(6) This chapter does not preclude an agency from enacting a rule affecting or**
947cy **governing an adjudicative proceeding or from following the rule, if the rule is enacted**
947cz **according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative**
947da **Rulemaking Act, and if the rule conforms to the requirements of this chapter.**

947db **(7) (a) If the attorney general issues a written determination that a provision of this**
947dc **chapter would result in the denial of funds or services to an agency of the state from the**
947dd **federal government, the applicability of the provision to that agency shall be suspended to the**
947de **extent necessary to prevent the denial.**

947df **(b) The attorney general shall report the suspension to the Legislature at its next**
947dg **session.**

947dh **(8) Nothing in this chapter may be interpreted to provide an independent basis**
947dh **for jurisdiction to review final agency action.**

947di **(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good**
947dj **cause shown, from lengthening or shortening a time period prescribed in this chapter, except**
947dk **the time period established for judicial review. ←§**

948 Section ~~H~~→ [16] 15 ←~~H~~ . Section **78B-6-205** is amended to read:

949 **78B-6-205. Judicial Council rules for ADR procedures.**

950 (1) To promote the use of ADR procedures, the Judicial Council may by rule establish
951 experimental and permanent ADR programs administered by the Administrative Office of the
952 Courts under the supervision of the director of Dispute Resolution Programs.

953 (2) The rules of the Judicial Council shall be based upon the purposes and provisions
954 of this part. Any procedural and evidentiary rules adopted by the Supreme Court may not
955 impinge on the constitutional rights of any parties.

956 (3) The rules of the Judicial Council shall include provisions:

957 (a) to orient parties and their counsel to the ADR program, ADR procedures, and the

989 (q) to assess the fees to cover the cost of compensation for the services of the ADR
990 provider and reimbursement for the provider's allowable, out-of-pocket expenses and
991 disbursements; and

992 (r) to allow vacation of an award by a court as provided in Section 78B-11-124.

993 (4) The Judicial Council may, from time to time, limit the application of its ADR rules
994 to particular judicial districts.

995 Section ~~H~~→ [17] 16 ←~~H~~ . Repealer.

996 This bill repeals:

997 Section **58-39a-1, Short title.**

998 Section **58-39a-2, Definitions.**

999 Section **58-39a-3, Board -- Composition -- Duties.**

1000 Section **58-39a-4, Certification and recognition of certification by other states.**

1001 Section **58-39a-5, Qualifications for certification.**

1002 Section **58-39a-5.5, Term of certificate -- Expiration -- Renewal.**

1003 Section **58-39a-6, Grounds for denial of certificate -- Disciplinary proceedings.**

Legislative Review Note

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Office of Legislative Research and General Counsel