

1 **DIVISION OF OCCUPATIONAL AND**
2 **PROFESSIONAL LICENSING ACT**
3 **AMENDMENTS**

4 1998 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Scott N. Howell**

7 AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; REVISING THE
8 REQUIREMENTS FOR LICENSURE BY ENDORSEMENT; PROVIDING FOR
9 LICENSURE BY EQUIVALENCY; PROVIDING FOR ACCESS TO RELEVANT
10 RECORDS MAINTAINED BY OTHER GOVERNMENT AGENCIES; AUTHORIZING THE
11 USE OF FINGERPRINT CARDS AND BACKGROUND CHECKS FOR APPLICANTS;
12 PROVIDING ADMINISTRATIVE FINE AND CITATION AUTHORITY; PROVIDING FOR
13 ENFORCEMENT; AND MAKING TECHNICAL CHANGES.

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

15 AMENDS:

16 **58-1-302**, as renumbered and amended by Chapter 297, Laws of Utah 1993

17 **58-1-401**, as last amended by Chapter 175, Laws of Utah 1996

18 **58-1-404**, as renumbered and amended by Chapter 297, Laws of Utah 1993

19 **58-1-503**, as renumbered and amended by Chapter 297, Laws of Utah 1993

20 **58-3a-103**, as enacted by Chapter 260, Laws of Utah 1996

21 **58-22-103**, as last amended by Chapter 259, Laws of Utah 1996

22 **58-53-11**, as enacted by Chapter 274, Laws of Utah 1994

23 **78-14-12**, as last amended by Chapter 137, Laws of Utah 1997

24 ENACTS:

25 **58-1-405**, Utah Code Annotated 1953

26 **58-1-502.1**, Utah Code Annotated 1953

27 **58-1-502.2**, Utah Code Annotated 1953

1 REPEALS:

2 **58-67a-1**, as enacted by Chapters 248 and 282, Laws of Utah 1996

3 This act enacts uncodified material.

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

5 Section 1. Section **58-1-302** is amended to read:

6 **58-1-302. License by endorsement and equivalency.**

7 (1) The division may issue a license [without examination] by endorsement to a person
8 who [has been]:

9 (a) is currently licensed in good standing in any state, district, or territory of the United
10 States [or in any foreign country, whose education, experience, and examination requirements are,
11 or were at the time the license was issued, equal to those of this state. Before any person may be
12 issued a license under this section, he shall produce satisfactory evidence of his qualifications,
13 identity, and good standing in his occupation or profession.];

14 (b) unless a different hourly requirement is provided in the specific licensing chapter
15 within this title, has been actively engaged in the legal practice of his occupation or profession for
16 not less than 4,000 hours during the three years immediately preceding the date of application for
17 licensure in Utah;

18 (c) does not have any action pending against his license; and

19 (d) meets all additional requirements for licensure by endorsement as may be required
20 under the specific licensing chapter or by division rule.

21 (2) The division may issue a license by equivalency to a person who:

22 (a) has received his education and training outside the United States;

23 (b) meets all applicable statutory and regulatory requirements for entry into the United
24 States;

25 (c) has a current certificate from a recognized independent credentialing organization, as
26 defined by division rule in collaboration with the appropriate board, verifying that the applicant's
27 education, training, license, and experience:

28 (i) are equivalent to that required for a Utah licensee;

29 (ii) are authentic; and

30 (iii) in the case of a license, is active and in good standing;

31 (d) has passed all licensing or certification examinations as may be required under the

1 specific licensing chapter or by division rule; and

2 (e) meets all additional requirements for a license by equivalency as may be required under
3 the specific licensing chapter or by division rule.

4 (3) Before any person may be issued a license under this section, he shall produce
5 satisfactory evidence of his qualifications, identity, and good standing in his occupation or
6 profession.

7 Section 2. Section **58-1-401** is amended to read:

8 **58-1-401. Grounds for denial of license or other action upon a license -- Criminal**
9 **history checks -- Disciplinary proceedings -- Time limitations -- Sanctions.**

10 (1) The division shall refuse to issue a license to an applicant and shall refuse to renew or
11 shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee
12 who does not meet the qualifications for licensure under this title.

13 (2) The division may refuse to issue a license to an applicant and may refuse to renew or
14 may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or
15 otherwise act upon the license of any licensee in any of the following cases:

16 (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute
17 or rule under this title;

18 (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under
19 this title;

20 (c) the applicant or licensee has been determined to be mentally incompetent for any
21 reason by a court of competent jurisdiction; or

22 (d) the applicant or licensee is unable to practice the occupation or profession with
23 reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics,
24 chemicals, or any other type of material, or as a result of any other mental or physical condition,
25 when the licensee's condition demonstrates a threat or potential threat to the public health, safety,
26 or welfare.

27 (3) (a) The division may query criminal history records or other relevant records from
28 other state agencies to which it has direct access in accordance with Section 58-1-405. As
29 specified by rule, the division may also require applicants for initial licensure to submit fingerprint
30 cards in a form acceptable to the division and to consent to a fingerprint background check by the
31 Utah Bureau of Criminal Identification and the Federal Bureau of Investigation.

1 **(b) The division may request the Department of Public Safety to complete a Federal**
2 **Bureau of Investigation criminal background check for any applicant for licensure through the**
3 **national criminal history system (NCIC) or any successor system.**

4 **(c) The cost of any background check or fingerprinting conducted in accordance with this**
5 **section shall be borne by the applicant.**

6 **(d) Any license issued where a background check is required but has not yet been**
7 **completed shall be considered conditional, pending completion of the criminal background check.**
8 **If the criminal background check reveals that the applicant has failed to accurately disclose a**
9 **criminal history, the applicant's license shall be immediately and automatically revoked.**

10 **(e) Any person whose license has been revoked under Subsection (3)(d), is entitled to a**
11 **postrevocation hearing upon timely request, to challenge the revocation. The hearing shall be**
12 **conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.**

13 **[(3)] (4) Any licensee whose license to practice an occupation or profession regulated by**
14 **this title has been suspended, revoked, or restricted may apply for relicensure or reinstatement of**
15 **[the license] licensure at reasonable intervals and upon compliance with any conditions imposed**
16 **upon the licensee by statute, rule, or terms of the license suspension, revocation, or restriction.**

17 **[(4)] (5) The division may issue cease and desist orders:**

18 **(a) to a licensee or applicant who may be disciplined under Subsection (1) or (2);**

19 **(b) to any person who engages in or represents himself to be engaged in an occupation or**
20 **profession regulated under this title; and**

21 **(c) to any person who otherwise violates this title or any rules adopted under this title.**

22 **[(5)] (6) (a) The division may not take disciplinary action against any person for**
23 **unprofessional or unlawful conduct under this title, unless the division initiates an adjudicative**
24 **proceeding regarding the conduct within four years after the conduct is reported to the division,**
25 **except under Subsection [(5)](6)(b).**

26 **(b) The division may not take disciplinary action against any person for unprofessional**
27 **or unlawful conduct more than ten years after the occurrence of the conduct, unless the proceeding**
28 **is in response to a civil or criminal judgment or settlement and the proceeding is initiated within**
29 **one year following the judgment or settlement.**

30 Section 3. Section **58-1-404** is amended to read:

31 **58-1-404. Diversion -- Procedure.**

1 (1) As used in this section, "diversion" means suspending action to discipline a licensee
2 charged with certain offenses within the category of unprofessional conduct on the condition that
3 the licensee agrees to participate in an educational or rehabilitation program or fulfill some other
4 condition.

5 (2) (a) The director may establish, as circumstances require, a diversion advisory
6 committee for each occupation or profession or similar groups of occupations or professions
7 licensed by the division. The committees shall assist the director in the administration of this
8 section.

9 (b) Each committee shall consist of three or more licensees from the same or similar
10 occupation or profession as the person whose conduct is the subject of the committee's
11 consideration. The members of a diversion advisory committee shall be [nominated] appointed
12 by the director from nominations submitted by the corresponding board established for the same
13 occupation or profession under Section 58-1-201 or from other qualified nominees selected by the
14 division. Committee members may not serve concurrently as members of the corresponding
15 board. Committee members shall serve voluntarily without remuneration. The director may
16 dissolve any diversion advisory committee, remove or request the replacement of any member of
17 a committee, and establish any procedure that is necessary and proper for a committee's
18 administration.

19 (3) The director may, after consultation with the appropriate diversion advisory committee
20 and by written agreement with the licensee, divert the licensee to a diversion program, at any time
21 after receipt of a complaint, prior to notifying a licensee that formal disciplinary action for
22 unprofessional conduct is being considered against the licensee, or prior to the conclusion of a
23 hearing under Section 58-1-108.

24 (4) The division shall define by rule the particular offenses within the category of
25 unprofessional conduct which may be subject to diversion. A licensee may be eligible for a
26 diversion program only once for the same or similar offense and is not eligible if previously
27 disciplined by the division, by a licensing agency of another state, or by a federal government
28 agency for the same or a similar offense. Diversion programs may not be longer than [~~two~~] five
29 years. A decision by the director not to divert a licensee is not subject to appeal or judicial review.

30 (5) A licensee may be represented by counsel during the negotiations for diversion, at the
31 time of the execution of the diversion agreement, and at any hearing before the director relating

1 to a diversion program.

2 (6) Any diversion agreement entered into between the division and the licensee shall
3 contain a full detailed statement of the requirements agreed to by the licensee and the reasons for
4 diversion.

5 (7) A diversion agreement may not be approved unless the licensee in the agreement
6 knowingly and intelligently waives the right to a hearing under Section 58-1-108.

7 (8) The director shall dismiss the charges against a licensee who has completed the
8 requirements of his diversion agreement. The licensee may not thereafter be subject to disciplinary
9 action for the conduct involved.

10 (9) Diversion is not a determination that charges have been proven. If the charges are
11 dismissed following diversion, the matter shall be treated as if the charge had never been filed,
12 except the fact that a licensee has completed a diversion program and the terms and conditions of
13 the diversion program may be considered by the division in determining appropriate disciplinary
14 action to be taken in the event the licensee is charged in the future with the same or a similar
15 offense. No reporting or release of information regarding the diversion program of an individual
16 licensee or the fact that charges were filed may be made to anyone outside the division. The
17 licensee may not be required to report to any person, agency, or corporation the fact that he has
18 been subject to a diversion program if the licensee successfully completes the diversion program.
19 Negotiations or hearings regarding diversion may not be subject to the requirements of Title 52,
20 Chapter 4, Open and Public Meetings.

21 (10) If, during the course of the diversion of a licensee, information is brought to the
22 attention of the director that the licensee has violated the diversion agreement, and if it appears in
23 the best interest of the public to proceed with the charges, the director after consultation with the
24 diversion advisory committee, shall cause to be served on the licensee an order to show cause
25 specifying the facts relied upon by the director to terminate diversion and which sets a time and
26 place for a hearing to determine whether or not the licensee has violated the diversion agreement.
27 If, after the hearing, the director finds that the licensee has failed to comply with any terms or
28 conditions of the diversion agreement, the director shall proceed with the charges against the
29 licensee which resulted in the diversion agreement plus any additional charges of unprofessional
30 conduct arising from a violation of the diversion agreement.

31 Section 4. Section **58-1-405** is enacted to read:

1 **58-1-405. Access to records**

2 (1) The division shall be allowed direct access to records of other state agencies which are
3 relevant to the division's responsibilities under this title. These records shall include:

4 (a) records maintained by the Department of Public Safety, including criminal history
5 records or warrant of arrest information maintained by the Law Enforcement and Technical
6 Services Division;

7 (b) records maintained by the Department of Workforce Services; and

8 (c) records maintained by the Utah State Tax Commission.

9 (2) The division shall implement procedures acceptable to each state agency to ensure the
10 security and confidentiality of the records of that agency.

11 Section 5. Section **58-1-502.1** is enacted to read:

12 **58-1-502.1. Unlawful and unprofessional conduct -- Civil fine.**

13 (1) If upon inspection or investigation, the division concludes that a person has engaged
14 in unprofessional conduct or unlawful conduct as defined under this title or rules enacted under
15 this title, and that disciplinary action is appropriate, the director or his designee from within the
16 division shall promptly:

17 (a) issue a citation to the person according to this chapter and any rules enacted thereunder;

18 (b) attempt to negotiate a stipulated settlement; or

19 (c) notify the person to appear before an adjudicative proceeding conducted under Title
20 63, Chapter 46b, Administrative Procedures Act.

21 (2) Any person who has engaged in unprofessional or unlawful conduct, as evidenced by
22 an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
23 proceeding, may be assessed a fine pursuant to this section and may, in addition to or in lieu of any
24 such fine, be ordered to cease and desist from engaging in the unprofessional or unlawful conduct.

25 (3) The division shall define by rule the particular offenses within the categories of
26 unprofessional or unlawful conduct, the violation of which may be resolved through the issuance
27 of a citation.

28 (a) Except for a cease and desist order, the licensure sanctions cited in Section 58-1-401
29 may not be assessed through a citation.

30 (b) Each citation issued under this section shall be in writing and describe with
31 particularity the nature of the violation, including a reference to the provision of the chapter, rule,

1 or order alleged to have been violated. The citation shall clearly state that the recipient must notify
2 the division in writing within 20 calendar days of service of the citation if the recipient wishes to
3 contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures
4 Act. The citation shall clearly explain the consequences of failure to timely contest the citation
5 or to make payment of any fines assessed by the citation within the time specified in the citation.

6 (c) Each citation issued under this section or a copy of each citation shall be served either
7 in the same manner as provided in the Utah Rules of Civil Procedure for service of a summons or
8 by registered or certified mail.

9 (d) If within 20 calendar days from the service of the citation, the person to whom the
10 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
11 order of the division and is not subject to further agency review. The period to contest a citation
12 may be extended by the division for good cause.

13 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the
14 license of a licensee who fails to comply with a citation after it becomes final.

15 (f) The failure of an applicant for licensure to comply with a citation after it becomes final
16 is a ground for denial of licensure.

17 (g) No citation may be issued under this section more than six months after the occurrence
18 of any violation is reported to the division.

19 (4) (a) Unless otherwise specified in a specific chapter of this title, fines shall be assessed
20 by the director or his designee as follows:

21 (i) for a first offense handled pursuant to this section, a fine of up to \$1,000;

22 (ii) for a second offense handled pursuant to this section, a fine of up to \$2,000; and

23 (iii) for any subsequent offense handled pursuant to this section, a fine of up to \$2,000 for
24 each day of continued offense.

25 (b) (i) For purposes of issuing a final order under this section and assessing a fine under
26 Subsection (4)(a), an offense constitutes a second or subsequent offense if:

27 (A) the division previously issued a final order determining that a person committed a first
28 or second offense; or

29 (B) (I) the division has initiated an action for a first or second offense;

30 (II) no final order has been issued by the division in that action;

31 (III) the division determines during an investigation that occurred after the initiation of that

1 action that the person committed a second or subsequent offense; and

2 (IV) after determining that the person committed a second or subsequent offense, the
3 division issues a final order on that action.

4 (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(b)(i),
5 the division shall comply with the requirements of this section.

6 (5) All fines imposed by the director under Subsection (4)(a) shall be deposited into the
7 Division of Occupational and Professional Licensing Education and Enforcement Fund.

8 (6) (a) All fines under this section shall be collected by the Office of State Debt Collection
9 in accordance with the requirements and provisions of Title 63A, Chapter 8.

10 (b) The Office of State Debt Collection shall be entitled to recover all costs and any
11 reasonable attorney's fees that may be incurred in the collection of any fine imposed under this
12 section.

13 Section 6. Section **58-1-502.2** is enacted to read:

14 **58-1-502.2. Education and Enforcement fund.**

15 (1) There is created a special revenue fund known as the "Division of Occupational and
16 Professional Licensing Education and Enforcement Fund."

17 (2) The fund consists of monies from administrative penalties and fines collected pursuant
18 to this title.

19 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
20 into the fund.

21 (4) The director may make distributions from the fund for the following purposes:

22 (a) education and training of licensees under this title;

23 (b) education and training of the public or other interested persons in matters concerning
24 occupational and professional laws and practices; and

25 (c) enforcement of this title including:

26 (i) investigating unprofessional or unlawful conduct; and

27 (ii) providing legal representation to the division when the division takes legal action
28 against a person engaging in unprofessional or unlawful conduct.

29 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
30 shall be transferred to the General Fund.

31 (6) The division shall report annually to the appropriate appropriations subcommittee of

1 the Legislature concerning the fund.

2 Section 7. Section **58-1-503** is amended to read:

3 **58-1-503. Maximum civil penalty for violation of court order.**

4 (1) If any written order issued under this title or if an injunction or temporary restraining
5 order issued by a court of competent jurisdiction relating to this title is violated, the court may
6 impose a civil penalty of not more than \$2,000 for each day the written order, injunction, or
7 temporary restraining order is violated, if the person in violation has received notice of the written
8 order, injunction, or temporary restraining order.

9 (2) All penalties ordered under this section shall be deposited into the [General] Division
10 of Occupational and Professional Licensing Education and Enforcement Fund.

11 Section 8. Section **58-3a-103** is amended to read:

12 **58-3a-103. Education and enforcement fund.**

13 (1) There is created a special revenue fund known as the "Architects Education and
14 Enforcement Fund."

15 (2) The fund consists of monies from[:(a)] a surcharge fee placed on initial, renewal, and
16 reinstatement licensure fees under this chapter in accordance with the following:

17 [(i)] (a) the surcharge fee shall be determined by the department in accordance with
18 Section 63-38-3.2; and

19 [(ii)] (b) the surcharge fee shall not exceed 50% of the respective initial, renewal, or
20 reinstatement licensure fee[; and].

21 [~~(b) administrative penalties collected pursuant to this chapter.~~]

22 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
23 into the fund.

24 (4) The director may, with concurrence of the board, make distributions from the fund for
25 the following purposes:

26 (a) education and training of licensees under this chapter;

27 (b) education and training of the public or other interested persons in matters concerning
28 architectural laws and practices; and

29 (c) enforcement of this chapter by:

30 (i) investigating unprofessional or unlawful conduct; and

31 (ii) providing legal representation to the division when the division takes legal action

1 against a person engaging in unprofessional or unlawful conduct.

2 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
3 shall be transferred to the General Fund.

4 (6) The division shall report annually to the appropriate appropriations subcommittee of
5 the Legislature concerning the fund.

6 Section 9. Section **58-22-103** is amended to read:

7 **58-22-103. Education and enforcement fund.**

8 (1) There is created a special revenue fund known as the "Professional Engineer,
9 Professional Structural Engineer, and Professional Land Surveyor Education and Enforcement
10 Fund."

11 (2) The fund consists of monies from~~[(a)]~~ a surcharge fee placed on initial, renewal, and
12 reinstatement licensure fees under this chapter in accordance with the following:

13 ~~[(i)]~~ (a) the surcharge fee shall be established by the department in accordance with
14 Section 63-38-3.2; and

15 ~~[(ii)]~~ (b) the surcharge fee shall not exceed 50% of the respective initial, renewal, or
16 reinstatement licensure fee~~[, and]~~.

17 ~~[(b) administrative penalties collected pursuant to this chapter.]~~

18 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
19 into the fund.

20 (4) The director may, with concurrence of the board, make distributions from the fund for
21 the following purposes:

22 (a) education and training of licensees under this chapter;

23 (b) education and training of the public or other interested persons in matters concerning
24 engineering, structural engineering, and land surveying laws and practices; and

25 (c) enforcement of this chapter by:

26 (i) investigating unprofessional or unlawful conduct; and

27 (ii) providing legal representation to the division when the division takes legal action
28 against a person engaging in unprofessional or unlawful conduct.

29 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
30 shall be transferred to the General Fund.

31 (6) The division shall report annually to the appropriate appropriations subcommittee of

1 the Legislature concerning the fund.

2 Section 10. Section **58-53-11** is amended to read:

3 **58-53-11. Education and enforcement fund.**

4 (1) There is created a restricted account in the General Fund known as the "Landscape
5 Architects Education and Enforcement Fund" to provide revenue for educating landscape
6 architects, the public, and other interested persons concerning the requirements of this chapter and
7 any rule promulgated under this chapter and to enforce the provisions of this chapter, as defined
8 in this section.

9 (2) The fund shall [~~be funded by:~~] consist of monies from [(a)] a surcharge placed on
10 application fees for initial, renewal, and reinstatement licensure under this chapter, in an amount
11 established by the division with the collaboration of the board, not to exceed 50% of the fees[;
12 and].

13 [~~(b) monies received by the state by reason of civil penalties ordered and administrative
14 fines collected pursuant to this chapter.]~~

15 (3) (a) The fund shall earn interest.

16 (b) All interest earned on fund monies shall be deposited into the fund.

17 (4) The director may, with concurrence of the board and the executive director and in a
18 manner consistent with the duties of the division under this chapter, make distributions from the
19 fund for the following purposes:

20 (a) education and training of licensees under this chapter by:

21 (i) publication of this chapter, related chapters of Title 58 or other titles, rules
22 implementing or related to this chapter, policy statements, and declaratory orders of the division;
23 and

24 (ii) sponsorship of publications or presentations to educate licensees as to the requirements
25 of this chapter and rules implementing or related to this chapter;

26 (b) education and training of the public or other interested persons in matters concerning
27 landscape architectural laws and practices by publications or presentations; and

28 (c) enforcement of this chapter by:

29 (i) investigating unprofessional or unlawful conduct; and

30 (ii) providing legal representation to the division when the division takes legal action
31 against a person engaging in unprofessional or unlawful conduct.

1 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
2 shall be transferred to the General Fund.

3 (6) Through the division, the board shall report annually to the appropriate appropriations
4 subcommittee of the Legislature concerning the fund.

5 Section 11. Section **78-14-12** is amended to read:

6 **78-14-12. Division to provide panel -- Exemption -- Procedures -- Statute of**
7 **limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license**
8 **fees.**

9 (1) (a) The division shall provide a hearing panel in alleged medical liability cases against
10 health care providers as defined in Section 78-14-3, except dentists.

11 (b) (i) The division shall establish procedures for prelitigation consideration of medical
12 liability claims for damages arising out of the provision of or alleged failure to provide health care.

13 (ii) The division may establish rules necessary to administer the process and procedures
14 related to prelitigation hearings and the conduct of prelitigation hearings in accordance with
15 Sections 78-14-12 through 78-14-16.

16 (c) The proceedings are informal, nonbinding, and are not subject to Title 63, Chapter 46b,
17 Administrative Procedures Act, but are compulsory as a condition precedent to commencing
18 litigation.

19 (d) Proceedings conducted under authority of this section are confidential, privileged, and
20 immune from civil process.

21 (2) (a) The party initiating a medical liability action shall file a request for prelitigation
22 panel review with the division within 60 days after the service of a statutory notice of intent to
23 commence action under Section 78-14-8.

24 (b) The request shall include a copy of the notice of intent to commence action. The
25 request shall be mailed to all health care providers named in the notice and request.

26 (3) (a) The filing of a request for prelitigation panel review under this section tolls the
27 applicable statute of limitations until the earlier of 60 days following the division's issuance of an
28 opinion by the prelitigation panel, or 60 days following the termination of jurisdiction by the
29 division as provided in this subsection. The division shall send any opinion issued by the panel
30 to all parties by regular mail.

31 (b) (i) The division shall complete a prelitigation hearing under this section within 180

1 days after the filing of the request for prelitigation panel review, or within any longer period as
2 agreed upon in writing by all parties to the review.

3 (ii) If the prelitigation hearing has not been completed within the time limits established
4 in Subsection (3)(b)(i), the division has no further jurisdiction over the matter subject to review
5 and the claimant is considered to have complied with all conditions precedent required under this
6 section prior to the commencement of litigation.

7 (c) (i) The claimant and any respondent may agree by written stipulation that no useful
8 purpose would be served by convening a prelitigation panel under this section.

9 (ii) When the stipulation is filed with the division, the division shall within ten days after
10 receipt enter an order divesting itself of jurisdiction over the claim, as it concerns the stipulating
11 respondent, and stating that the claimant has complied with all conditions precedent to the
12 commencement of litigation regarding the claim.

13 (4) The division shall provide for and appoint an appropriate panel or panels to hear
14 complaints of medical liability and damages, made by or on behalf of any patient who is an alleged
15 victim of medical liability. The panels are composed of:

16 (a) one member who is a resident lawyer currently licensed and in good standing to
17 practice law in this state and who shall serve as chairman of the panel, who is appointed by the
18 division from among qualified individuals who have registered with the division indicating a
19 willingness to serve as panel members, and a willingness to comply with the rules of professional
20 conduct governing lawyers in the state of Utah, and who has completed division training regarding
21 conduct of panel hearings;

22 (b) (i) one member who is a licensed health care provider listed under Section 78-14-3,
23 who is practicing and knowledgeable in the same specialty as the proposed defendant, and who
24 is appointed by the division in accordance with Subsection (5); or

25 (ii) in claims against only hospitals or their employees, one member who is an individual
26 currently serving in a hospital administration position directly related to hospital operations or
27 conduct that includes responsibility for the area of practice that is the subject of the liability claim,
28 and who is appointed by the division; and

29 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
30 provider, and who is a responsible citizen of the state, selected and appointed by the division from
31 among individuals who have completed division training with respect to panel hearings.

1 (5) (a) Each person listed as a health care provider in Section 78-14-3 and practicing under
2 a license issued by the state, is obligated as a condition of holding that license to participate as a
3 member of a medical liability prelitigation panel at reasonable times, places, and intervals, upon
4 issuance, with advance notice given in a reasonable time frame, by the division of an Order to
5 Participate as a Medical Liability Prelitigation Panel Member.

6 (b) A licensee may be excused from appearance and participation as a panel member upon
7 the division finding participation by the licensee will create an unreasonable burden or hardship
8 upon the licensee.

9 (c) A licensee whom the division finds failed to appear and participate as a panel member
10 when so ordered, without adequate explanation or justification and without being excused for
11 cause by the division, may be assessed an administrative fine not to exceed \$5,000.

12 (d) A licensee whom the division finds intentionally or repeatedly failed to appear and
13 participate as a panel member when so ordered, without adequate explanation or justification and
14 without being excused for cause by the division, may be assessed an administrative fine not to
15 exceed \$5,000, and is guilty of unprofessional conduct.

16 (e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the
17 ~~[Physicians Education Account]~~ Division of Occupational and Professional Licensing Education
18 and Enforcement Fund created in Section ~~[58-67a-1]~~ 58-1-502.2.

19 (6) Each person selected as a panel member shall certify, under oath, that he has no bias
20 or conflict of interest with respect to any matter under consideration.

21 (7) Members of the prelitigation hearing panels shall receive per diem compensation and
22 travel expenses for attending panel hearings as established by rules of the division.

23 (8) (a) In addition to the actual cost of administering the licensure of health care providers,
24 the division may set license fees of health care providers within the limits established by law equal
25 to their proportionate costs of administering prelitigation panels.

26 (b) The claimant bears none of the costs of administering the prelitigation panel except
27 under Section 78-14-16.

28 **Section 12. Transfer of funds in the Physicians Education Fund.**

29 On the effective date of this bill, all monies remaining in the Physicians Education Fund
30 authorized under Section 58-67a-1 shall be transferred to the Division of Occupational and
31 Professional Licensing Education and Enforcement Fund created in Section 58-1-502.2.

- 1 Section 13. **Repealer.**
- 2 This act repeals:
- 3 Section **58-67a-1, Physicians Education Fund.**

Legislative Review Note
as of 1-6-98 12:12 PM

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

Office of Legislative Research and General Counsel