

LICENSURE OF GEOLOGISTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Ralph Becker

This act modifies the Occupations and Professions Code by enacting the Professional Geologist Licensing Act. The act requires the licensure of individuals practicing geology before the public and defines the practice of geology before the public. The act creates the Professional Geologist Licensing Board and sets forth its membership and duties. The act sets forth the qualifications for licensure. The act defines unlawful and unprofessional conduct. The act creates an education and enforcement fund and provides for citation authority and administrative penalties. The act provides for exemptions from licensure. The act provides for the use of seals by professional geologists and delineates the circumstances under which they are to be used.

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

ENACTS:

58-77-101, Utah Code Annotated 1953

58-77-102, Utah Code Annotated 1953

58-77-103, Utah Code Annotated 1953

58-77-201, Utah Code Annotated 1953

58-77-301, Utah Code Annotated 1953

58-77-302, Utah Code Annotated 1953

58-77-303, Utah Code Annotated 1953

58-77-304, Utah Code Annotated 1953

58-77-401, Utah Code Annotated 1953

58-77-501, Utah Code Annotated 1953

58-77-502, Utah Code Annotated 1953

58-77-601, Utah Code Annotated 1953

58-77-602, Utah Code Annotated 1953

58-77-603, Utah Code Annotated 1953

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

Section 1. Section **58-77-101** is enacted to read:

CHAPTER 1. PROFESSIONAL GEOLOGIST LICENSING ACT

Part 1. General Provisions

58-77-101. Title.

This chapter is known as the "Professional Geologist Licensing Act."

Section 2. Section **58-77-102** is enacted to read:

58-77-102. Definitions.

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

(1) "Board" means the Professional Geologist Licensing Board created in Section 58-77-201.

(2) "Geology" means the science, which treats the study of the earth in general, the earth's processes and history, investigation of the earth's crust and the rocks and other materials of which it is composed, and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gases, and other materials for the use of mankind.

(3) "Practice of geology before the public" means the performance of geology including but not limited to consultation, investigation, evaluation, planning, geologic mapping, interpretation of geologic data, preparation of geologic reports, geologic cross-sections and geologic maps, inspection of geological work, and the responsible supervision thereof, the performance of which is relevant to public welfare or the safeguarding of life, health, property, and the environment, except as otherwise specifically provided by this chapter.

(4) "Professional geologist" means a person licensed under this chapter to engage in the practice of geology before the public.

(5) "Responsible charge" means the independent control and direction by use of initiative, skill, and independent judgment of geological work or the supervision of the work.

(6) "Subordinate" means any individual who practices geology or assists a professional geologist in the practice of geology before the public without assuming the responsible charge for the work.

(7) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-77-501.

(8) "Unprofessional conduct" is as defined in Section 58-1-501 and as may be further defined by rule by the division in collaboration with the board.

Section 3. Section **58-77-103** is enacted to read:

58-77-103. Education and enforcement fund.

(1) There is created within the General Fund a restricted account known as the "Professional Geologist Education and Enforcement Fund."

(2) The account shall be nonlapsing and consist of monies from:

(a) a surcharge fee established by the department in accordance with Section 63-38-3.2, placed on initial, renewal, and reinstatement licensure fees under this chapter not to exceed 50% of the respective initial, renewal, or reinstatement licensure fee;

(b) administrative penalties collected pursuant to this chapter; and

(c) interest earned on monies in the account.

(3) Monies in the account may be appropriated by the Legislature for the following purposes:

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

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

(c) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and

(iii) monitoring compliance of renewal requirements; and

(d) education and training of board members.

Section 4. Section **58-77-201** is enacted to read:

Part 2. Board

58-77-201. Board.

(1) There is created the Professional Geologist Licensing Board consisting of five members as follows:

(a) three professional geologists;

(b) the Utah state geologist; and

(c) one member representing the general public.

(2) Except for the Utah state geologist, the board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and the board shall also:

(a) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of professional geologists; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 5. Section **58-77-301** is enacted to read:

Part 3. Licensing

58-77-301. License required -- License classification.

(1) After January 1, 2003, a license is required to engage in the practice of geology before the public except as specifically provided in Sections 58-1-307 and 58-77-304.

(2) The division shall issue to a person who qualifies under the provisions of this chapter a license in the classification of professional geologist.

Section 6. Section **58-77-302** is enacted to read:

58-77-302. Qualifications for licensure.

Each applicant for licensure as a professional geologist shall:

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

(2) pay a fee as determined by the department under Section 63-38-3.2;

(3) be of good moral character;

(4) provide satisfactory evidence of:

(a) a bachelors or graduate degree in the geosciences granted through an institution of higher

education that is accredited by a regional or national accrediting agency with a minimum of 30 semester or 45 quarter hours of course work in the geosciences; or

(b) completion of other equivalent educational requirements as determined by the division in collaboration with the board;

(5) provide satisfactory evidence of:

(a) with a bachelors degree, a specific record of five years of active professional practice in geological work of a character satisfactory to the division, indicating the applicant is competent to be placed in a responsible charge of the work;

(b) with a masters degree, a specific record of three years of active professional practice in geological work of a character satisfactory to the division, indicating the applicant is competent to be placed in a responsible charge of the work; or

(c) with a doctorate degree, a specific record of one year of active professional practice in geological work of a character satisfactory to the division, indicating the applicant is competent to be placed in a responsible charge of the work; and

(6) after January 1, 2004, meet the examination requirement established by rule by the division in collaboration with the board.

Section 7. Section **58-77-303** is enacted to read:

58-77-303. Term of license -- Expiration -- Renewal.

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

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

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

Section 8. Section **58-77-304** is enacted to read:

58-77-304. Exemption from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the practice of geology, subject to the stated circumstances and limitations, without being licensed

under this chapter if they do not use the title of professional geologist or are not directly represented or held out to the public to be legally qualified to engage in the practice of geology before the public in this state:

(1) an employee or subordinate of a professional geologist licensed under this chapter, or any employee of an individual exempted from licensure under this Subsection (1) or Subsection (2), provided that the employee's or subordinate's practice does not include responsible charge;

(2) qualified engineers and land surveyors, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, who do not intentionally represent themselves to be professional geologists;

(3) an individual, individual practitioner, or regular full-time employee of a firm, partnership, association, corporation, or other business entity engaged in the exploration for and development of coal, uranium, oil, natural gas, geothermal or other energy resources, precious and nonprecious metals and minerals, and industrial and other minerals, including sand, gravel, and aggregate if the geological work is performed solely for internal use within the company and is not offered directly to the public;

(4) an individual engaged in teaching or research in the physical or natural sciences who is not otherwise engaged in practicing geology before the public;

(5) an individual providing agricultural or agronomic soils analyses, sampling, or laboratory testing; and

(6) an employee of a communications, utility, railroad, mining, petroleum, or manufacturing company, or an affiliate of such a company, if the geological work is performed solely for internal use within the company and is not offered directly to the public.

Section 9. Section **58-77-401** is enacted to read:

Part 4. License Denial and Discipline

58-77-401. Grounds for denial of license -- Disciplinary proceedings.

Division grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders are in accordance with

Section 58-1-401.

Section 10. Section **58-77-501** is enacted to read:

Part 5. Unlawful and Unprofessional Conduct

58-77-501. Unlawful conduct.

In addition to the definition in Subsection 58-1-501(1), "unlawful conduct" includes:

(1) using the title "Professional Geologist" or any other words, letters, abbreviations, or designations, which represent recognized professional geological disciplines indicating that the person using them is a professional geologist, unless the person holds a valid license issued under this chapter; or

(2) as a corporation, proprietorship, partnership, or limited liability company, engaging in or representing that the entity is engaging in the practice of geology before the public, unless at least one individual employee of the entity holds a valid license issued under this chapter.

Section 11. Section **58-77-502** is enacted to read:

58-77-502. Penalty for unlawful conduct.

(1) (a) If, upon inspection or investigation, the division concludes that a person has violated Section 58-77-501 or any rule or order issued with respect to Section 58-77-501, and that disciplinary action is appropriate, the director or his or her designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-77-501 or any rule or order issued with respect to Section 58-77-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-77-501 or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-77-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

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

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

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

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

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

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or his designee shall assess fines according to the following:

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

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000

for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

Section 12. Section **58-77-601** is enacted to read:

Part 6. Practice Standards

58-77-601. Seal -- Design and implementation.

Every professional geologist shall have a seal, the design and implementation of which shall be established by rule by the division in collaboration with the board.

Section 13. Section **58-77-602** is enacted to read:

58-77-602. Geologic maps, cross-sections, reports, and documents to be sealed.

(1) Any final geologic map, cross-section, or report prepared in this state shall bear the seal of a professional geologist licensed under this chapter, except as provided in Section 58-77-304.

(2) Any final geologic map, cross-section, sketch, drawing, plan, or report prepared by, or under the supervision of, a professional geologist shall bear the seal of the professional geologist when submitted to a client or when filed with public authorities, even if the practice is exempt from licensure under Section 58-77-304.

Section 14. Section **58-77-603** is enacted to read:

58-77-603. Seal -- Authorized use.

A professional geologist may only affix the licensee's seal to a geologic map, cross-section,

sketch, drawing, plan, or report if the geologic map, cross-section, sketch, drawing, plan, or report:

(1) was personally prepared by the licensee;

(2) was prepared by an employee, subordinate, associate, or drafter under the supervision of a licensee, provided the licensee or a principal affixing his seal assumes responsibility;

(3) was prepared by a licensed professional geologist in this state or any other state provided:

(a) the licensee in this state affixing the seal performs a thorough review of all work for compliance with all applicable laws and rules and the standards of the profession; and

(b) makes any necessary corrections before submitting the final plan, specification, or report:

(i) to a public authority; or

(ii) to a client who has contracted with a professional geologist for the geologic map, cross-section, or report to be complete and final;

(4) was prepared in part by a licensed professional geologist in this state or any other state provided:

(a) the licensee in this state clearly identifies that portion of the geologic map, cross-section, or report for which the licensee is responsible;

(b) the licensee in this state affixing the seal performs a thorough review of that portion of the geologic map, cross-section, or report for which the licensee is responsible for compliance with the standards of the profession; and

(c) makes any necessary corrections before submitting the final geologic map, cross-section, or report for which the licensee is responsible:

(i) to a public authority; or

(ii) to a client who has contracted with a professional geologist for the geologic map, cross-section, or report to be complete and final;

(5) was prepared by a person exempt from licensure as a professional geologist provided that:

(a) the licensee in this state affixing the seal performs a thorough review for compliance with all applicable laws and rules and the standards of the profession; and

(b) makes any necessary corrections before submitting the final geologic map, cross-section,

or report:

(i) to a public authority; or

(ii) to a client who has contracted with a professional geologist for the geologic map, cross-section, or report to be complete and final; or

(6) meets any additional requirements established by rule by the division in collaboration with the board.