

**REVISIONS TO BOARDS AND COMMISSIONS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard A. Stephenson**

**This act modifies certain state boards and commissions. The act repeals certain boards and modifies the appointment requirements or the duties and responsibilities of other boards. This act requires the Occupational and Professional Licensure Review Committee to study the possible repeal of, combination of, or modifications to certain licensing boards and whether or not certain occupations should be licensed by the state. This act makes technical changes. This act provides an effective date.**

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

AMENDS:

- 23-14-2.5, as enacted by Chapter 211, Laws of Utah 1995
- 61-1-6, as last amended by Chapter 161, Laws of Utah 1991
- 63-56-6, as last amended by Chapter 243, Laws of Utah 1996
- 64-13-1, as last amended by Chapter 240, Laws of Utah 2000
- 64-13-17, as last amended by Chapters 198 and 237, Laws of Utah 1996
- 64-13a-3, as last amended by Chapter 92, Laws of Utah 1987

REPEALS:

- 11-33-1, as enacted by Chapter 223, Laws of Utah 1987
- 11-33-2, as enacted by Chapter 223, Laws of Utah 1987
- 11-33-3, as last amended by Chapter 67, Laws of Utah 2002
- 11-33-4, as last amended by Chapter 56, Laws of Utah 1996
- 11-33-5, as enacted by Chapter 223, Laws of Utah 1987
- 11-33-6, as enacted by Chapter 223, Laws of Utah 1987
- 11-33-7, as enacted by Chapter 223, Laws of Utah 1987
- 11-33-8, as enacted by Chapter 223, Laws of Utah 1987
- 13-2-6.5, as last amended by Chapter 243, Laws of Utah 1996
- 17-40-1, as enacted by Chapter 264, Laws of Utah 1991

- 17-40-2, as last amended by Chapter 243, Laws of Utah 1996
- 26-10a-101, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 26-10a-102, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 26-10a-103, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 26-10a-104, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 63-55-272, as last amended by Chapter 185, Laws of Utah 2002
- 64-13-4.1, as last amended by Chapter 176, Laws of Utah 2002
- 64-13-5, as last amended by Chapter 135, Laws of Utah 1997
- 64-13a-5, as last amended by Chapter 243, Laws of Utah 1996
- 64-13a-6, as last amended by Chapter 13, Laws of Utah 1994
- 72-8-108, as enacted by Chapter 47, Laws of Utah 1999
- 72-13-101, as enacted by Chapter 372, Laws of Utah 2001
- 72-13-102, as enacted by Chapter 372, Laws of Utah 2001
- 72-13-103, as enacted by Chapter 372, Laws of Utah 2001
- 72-13-104, as enacted by Chapter 372, Laws of Utah 2001

This act enacts uncodified material.

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

Section 1. Section **23-14-2.5** is amended to read:

**23-14-2.5. Wildlife Board Nominating Committee -- Creation -- Membership --**

**Terms -- Quorum.**

- (1) There is created a Wildlife Board Nominating Committee which shall consist of 11 members.
- (2) The governor shall appoint members to the nominating committee as follows:
  - (a) three members shall be appointed from a list of at least two nominees per position submitted by the agriculture industry;
  - (b) three members shall be appointed from a list of at least two nominees per position submitted by sportsmen groups;
  - (c) two members shall be appointed from a list of at least two nominees per position

submitted by nonconsumptive wildlife interests;

(d) one member shall be appointed from a list of at least two nominees submitted by federal land management agencies;

(e) one local elected official shall be appointed from a list of at least two nominees submitted by the Utah Association of Counties; and

(f) one range management specialist shall be appointed from a list of at least two nominees submitted jointly by the Utah Chapter, Society of Range Management and the Utah Chapter, Wildlife Society.

(3) Each wildlife region described in Subsection 23-14-2.6(1) shall be represented by at least one member and no wildlife region may be represented by more than three members.

(4) The nominating committee shall nominate at least two, but not more than four, candidates for each position or vacancy which occurs on the board.

(5) (a) ~~[Each member shall serve]~~ Except as required by Subsection (5)(b), as terms of current board members expire, the governor shall appoint each new or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that:

(i) the terms of board members are staggered so that approximately half of the board is appointed every two years; and

(ii) members from the same wildlife region serve staggered terms.

(c) If a vacancy occurs for any reason, the governor shall appoint a replacement in the same manner that the position was originally filled to serve the remainder of the unexpired term.

~~[(b)]~~ (6) The nominating committee shall select a chair and vice chair from its membership.

~~[(c)]~~ (7) Six members shall constitute a quorum.

Section 2. Section **61-1-6** is amended to read:

**61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license.**

(1) ~~[Upon approval by a majority of the Securities Advisory Board,]~~ Subject to the

requirements of Subsections (2) and (3), the director, by means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, may issue an order:

(a) denying, suspending, or revoking any license~~;~~;

(b) barring or censuring any licensee or any officer, director, partner, or person occupying a similar status or performing similar functions for a licensee from employment with a licensed broker-dealer or investment adviser~~;~~~~or~~;

(c) restricting or limiting a licensee as to any function or activity of the business for which a license is required in this state~~;~~~~and~~;

(d) imposing a fine; or

(e) any combination of Subsections (1)(a) through (d).

(2) The director may impose [a fine] the sanctions in Subsection (1) if the director finds that it is in the public interest and ~~[if he]~~ finds ~~[any of the following]~~, with respect to the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, that the person:

(a) has filed an application for a license that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(c) was convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the director or any predecessor denying, suspending, or revoking license as a broker-dealer, agent, investment adviser, or investment adviser

representative;

(f) is the subject of:

(i) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(ii) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking license as a broker-dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; except that

(iii) the division may not commence agency action to revoke or suspend any license under Subsection (2)(f) more than one year from the date of the order relied on, and the director may not enter an order under Subsection (2)(f) on the basis of an order under another state's law unless that order was based on facts that would currently constitute a ground for an agency action under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, except that the director may not enter an order against a broker-dealer or investment adviser under this Subsection (2)(h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) is not qualified on the basis of the lack of training, experience, and knowledge of the securities business, except as otherwise provided in Subsection [~~(3)~~] (5);

(j) has failed reasonably to supervise his agents or employees if the person is a

broker-dealer, or his investment adviser representatives or employees if the person is an investment adviser; or

(k) has failed to pay the proper filing fee within 30 days after being notified by the division of a deficiency.

(3) Before the director may issue an order under Subsection (1) that: revokes any license; bars or censures any licensee or any officer, director, partner, or person occupying a similar status or performing similar functions for a licensee from employment with a licensed broker-dealer or investment adviser; or imposes a fine, the Securities Advisory Board shall:

(a) review the order; and

(b) if a majority of the Securities Advisory Board approves the order, authorize the director to issue it.

~~[(2)]~~ (4) The division may enter a denial order under Subsection ~~[(1)]~~ (2)(j) or (k), but shall vacate the order when the deficiency has been corrected.

~~[(3)]~~ (5) The division may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to it when the license became effective unless the proceeding is instituted within the next 120 days.

~~[(4)]~~ (6) The following provisions govern the application of Subsection ~~[61-1-6(1)(i)]~~ (2)(i):

(a) The director may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than:

- (i) the broker-dealer himself if he is an individual; or
- (ii) an agent of the broker-dealer.

(b) The director may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than:

- (i) the investment adviser himself if he is an individual; or
- (ii) an investment adviser representative.

(c) The director may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge.

(d) The director shall consider that an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer and that an investment adviser representative who will work under the supervision of a licensed investment adviser need not have the same qualifications as an investment adviser.

(e) (i) The director shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.

(ii) When the director finds that an applicant for a license as a broker-dealer is not qualified as an investment adviser, the director may condition the applicant's license as a broker-dealer upon the applicant's not transacting business in this state as an investment adviser.

(f) (i) The division may by rule provide for examinations, which may be written or oral or both, to be taken by any class of or all applicants.

(ii) The division may by rule or order waive the examination requirement as to a person or class of persons if the division determines that the examination is not necessary for the protection of investors.

~~[(5)]~~ (7) If the director finds that any licensee or applicant for a license is no longer in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the division may summarily cancel or deny the license or application according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

~~[(6)]~~ (8) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within a shorter period of time as determined by the director, unless:

- (i) a revocation or suspension proceeding is pending when the application is filed;
- (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed; or
- (iii) additional information is requested by the division regarding the withdrawal application.

(b) (i) If a proceeding described in Subsection [~~(5)(a)~~] (7) is pending or instituted, the director shall designate by order when and under what conditions the withdrawal becomes effective.

(ii) If additional information is requested, withdrawal is effective 30 days after the additional information is filed.

(c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes effective, the director may initiate a revocation or suspension proceeding under [~~Section 61-1-6~~] this section within one year after withdrawal became effective.

(ii) The director shall enter any order under Subsection [~~(1)~~] (2)(b) as of the last date on which the license was effective.

Section 3. Section **63-56-6** is amended to read:

**63-56-6. Creation of procurement policy board.**

(1) (a) There is created a state procurement policy board.

(b) The policy board shall consist of [~~seven~~] eight members who shall be appointed as follows:

(i) an employee of a state institution of higher education, appointed by the board of regents;

(ii) an employee of the Department of Human Services, appointed by the executive director of that department;

(iii) an employee of the Department of Transportation, appointed by the executive director of that department;

(iv) an employee of a school district appointed by a cooperative purchasing entity for school districts;

(v) an employee of the Division of Facilities Construction and Management appointed by the director of that division;

(vi) an employee of a county, appointed by the [~~Utah Advisory Council on Intergovernmental Relations~~] Utah Association of Counties; [~~and~~]

(vii) an employee of a city, appointed by the [~~Utah Advisory Council on~~]



Intergovernmental Relations] Utah League of Cities and Towns; and

(viii) an employee of a special district, appointed by the Utah Association of Special Districts.

(c) Members of the policy board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.

(2) Members shall be appointed to four-year staggered terms.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) The policy board shall:

(i) adopt rules of procedure for conducting its business; and

(ii) elect a chair to serve for one year.

(b) The chair may be elected to succeeding terms.

(c) The chief procurement officer shall serve as the nonvoting secretary to the policy board.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of

Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Higher education members may decline to receive per diem and expenses for their service.

(d) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 4. Section **64-13-1** is amended to read:

**64-13-1. Definitions.**

As used in this chapter:

(1) "Community correctional center" means a nonsecure correctional facility operated:

- (a) by the department; or
- (b) under a contract with the department.

(2) "Correctional facility" means any facility operated to house offenders, either in a secure or nonsecure setting:

- (a) by the department; or
- (b) under a contract with the department.

~~[(3) "Council" means the Corrections Advisory Council.]~~

~~[(4)] (3) "Department" means the Department of Corrections.~~

~~[(5)] (4) "Emergency" means any riot, disturbance, homicide, inmate violence occurring in any correctional facility, or any situation that presents immediate danger to the safety, security, and control of the department.~~

~~[(6)] (5) "Executive director" means the executive director of the Department of Corrections.~~

~~[(7)] (6) "Inmate" means any person who is committed to the custody of the department and who is housed at a correctional facility or at a county jail at the request of the department.~~

~~[(8)]~~ (7) "Offender" means any person who has been convicted of a crime for which he may be committed to the custody of the department and is at least one of the following:

- (a) committed to the custody of the department;
- (b) on probation; or
- (c) on parole.

~~[(9)]~~ (8) "Secure correctional facility" means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain them if they attempt to leave the institution without authorization.

Section 5. Section **64-13-17** is amended to read:

**64-13-17. Visitors to correctional facilities -- Correspondence.**

(1) (a) The following persons may visit correctional facilities without the consent of the department:

- (i) the governor;
- (ii) the attorney general;
- (iii) a justice or judge of the courts of record;
- ~~[(iv) members of the Corrections Advisory Council;]~~
- ~~[(v)]~~ (iv) members of the Board of Pardons and Parole;
- ~~[(vi)]~~ (v) members of the Legislature;

~~[(vii)]~~ (vi) the sheriff, district attorney, and county attorney for the county in which the correctional facility is located; and

~~[(viii)]~~ (vii) any other persons authorized under rules prescribed by the department or court order.

(b) Any person acting under a court order may visit or correspond with any inmate without the consent of the department provided the department has received notice of, and is permitted to respond to, the court order. The court shall consider department policy when making its order.

(c) The department may limit access to correctional facilities when the department or governor declares an emergency or when there is a riot or other disturbance.

(2) (a) A person may not visit with any offender at any correctional facility, other than under Subsection (1), without the consent of the department.

(b) Offenders and all visitors, including those listed in Subsection (1), may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

(3) Offenders housed at any correctional facility may send and receive correspondence, subject to the rules of the department. All correspondence is subject to search, consistent with department rules.

Section 6. Section **64-13a-3** is amended to read:

**64-13a-3. Definitions.**

As used in this chapter[:(†)] "division" means the Division of Correctional Industries.

~~[(2) "Board" means the Advisory Board of Utah Correctional Industries.]~~

**Section 7. Licensing boards study.**

(1) To enhance efficiencies and reduce costs in state government, the Occupational and Professional Licensure Review Committee shall study licensing boards in the state.

(2) (a) The committee may consider the deregulation of:

(i) acupuncturists; and

(ii) naturopathic physicians.

(b) The committee may consider repealing Title 58, Chapter 39a, Alternative Dispute Resolution Providers Certification Act.

(c) The committee may consider modifying licensure requirements and eliminating the licensing board for:

(i) dieticians;

(ii) environmental health scientists;

(iii) occupational therapists;

(iv) radiology technologists and radiology practical technicians;

(v) respiratory therapists; and

(vi) speech pathologists/audiologists.

(d) The committee may consider combining the licensing entities responsible for:

- (i) certified nurse midwives and nurses;
- (ii) physicians and surgeons, physicians assistants, and osteopathic physicians;
- (iii) all mental health professions, including:
  - (A) psychologists;
  - (B) social workers;
  - (C) marriage and family therapists;
  - (D) professional counselors; and
  - (E) substance abuse counselors;
- (iv) architects and landscape architects;
- (v) physical therapists, recreational therapists, and occupational therapists;
- (vi) funeral service providers and preneed funeral providers; and
- (vii) if the licensing board for speech pathologist/audiologists is not eliminated, hearing instrument specialists and speech pathologists/audiologists.

(e) The committee may consider transferring the responsibility of regulating certain professions from the Division of Occupational and Professional Licensing to other entities including:

- (i) professional employer organizations to be regulated by the Department of Insurance or the Department of Financial Institutions;
- (ii) certified shorthand reporters to be regulated by the courts;
- (iii) health facility administrators to be regulated by the Department of Health; and
- (iv) private probation providers to be regulated by the Department of Corrections.

(f) The committee may consider eliminating the regulation of health facility pharmacies by the Pharmacy Board.

(3) The committee shall complete the study required by Subsection (1) and present its findings, including any proposed legislation, to the Business and Labor Interim Committee by November 30, 2003.

Section 8. **Repealer.**

This act repeals:

Section 11-33-1, **Legislative findings.**

Section 11-33-2, **Establishment of Utah Advisory Council on Intergovernmental Relations.**

Section 11-33-3, **Composition of council -- Appointment -- Terms -- Officers -- Vacancies -- Quorum -- Expenses.**

Section 11-33-4, **Functions and duties.**

Section 11-33-5, **Role of council.**

Section 11-33-6, **Council meetings -- Hearings -- Receipt of information and records -- Committees -- Rules.**

Section 11-33-7, **Executive director.**

Section 11-33-8, **Appropriations and grants.**

Section 13-2-6.5, **Consumer Protection Advisory Council -- Membership -- Terms -- Organization -- Expenses -- Duties.**

Section 17-40-1, **Salt Palace Convention Center -- Appropriation.**

Section 17-40-2, **Salt Palace Convention Center -- Oversight committee.**

Section 26-10a-101, **Title.**

Section 26-10a-102, **Healthy Communities Program -- Creation -- Description -- Committee.**

Section 26-10a-103, **Funding grants -- Qualifications -- Application process -- Matching funds required.**

Section 26-10a-104, **Evaluation -- Report to Legislature.**

Section 63-55-272, **Repeal dates, Title 72.**

Section 64-13-4.1, **Creation of Corrections Advisory Council.**

Section 64-13-5, **Council duties.**

Section 64-13a-5, **Creation of advisory board.**

Section 64-13a-6, **Board powers and duties.**

Section 72-8-108, **State Traffic and Pedestrian Safety Coordinating Council -- Membership -- Duties.**

Section **72-13-101, Title.**

Section **72-13-102, Definitions.**

Section **72-13-103, Powers of department -- Spaceports.**

Section **72-13-104, Advisory board created -- Appointment -- Terms -- Meetings --**

**Per diem and expenses -- Duties.**

Section 9. **Effective date.**

This act takes effect May 5, 2003, except that the repeal of Sections 64-13a-5 and 64-13a-6 takes effect May 1, 2004.