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OCCUPATIONS AND PROFESSIONS

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends provisions of Title 58, Occupations and Professions.

Highlighted Provisions:

This bill:

- ▶ clarifies provisions related to the Division of Occupational and Professional Licensing's access to Bureau of Criminal Identification records;
- ▶ modifies language related to the issuing of reprimands by the division;
- ▶ provides for the resolution of problems with the division through a stipulated agreement;
- ▶ modifies definition provisions in the Utah Controlled Substances Act and the Uniform Building Standards Act administered by the division;
- ▶ provides for the reporting of certain information by a trust that has applied to the division for an alarm company contractor license; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **58-1-301.5**, as last amended by Laws of Utah 2008, Chapter 211

30 **58-1-401**, as last amended by Laws of Utah 1996, Chapter 175

31 **58-31b-201**, as last amended by Laws of Utah 2005, Chapter 50

32 **58-37-7.5**, as last amended by Laws of Utah 2009, Chapter 41

33 **58-55-302**, as last amended by Laws of Utah 2009, Chapter 183

34 **58-56-3**, as last amended by Laws of Utah 2009, Chapter 339

35 **58-56-4**, as last amended by Laws of Utah 2009, Chapter 339



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

38 Section 1. Section **58-1-301.5** is amended to read:

39 **58-1-301.5. Division access to Bureau of Criminal Identification records.**

40 (1) The division shall have direct access to criminal background information
41 maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau
42 of Criminal Identification, for background screening of licensure applicants as required in:

43 (a) Section 58-17b-307 of Title 58, Chapter 17b, Pharmacy Practice Act;

44 [~~(a)~~] (b) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;

45 [~~(b)~~] (c) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;

46 [~~(c)~~] (d) Section 58-55-302 of Title 58, Chapter 55, Utah Construction Trades

47 Licensing Act, as it applies to alarm companies and alarm company agents;

48 [~~(d)~~] (e) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act;

49 and

50 [~~(e)~~] (f) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners

51 Licensing Act.

52 (2) The division access under Subsection (1) shall be:

53 (a) in accordance with Section 53-10-108[-]; and

54 (b) to all convictions, pleas of nolo contendere, pleas of guilty or nolo contendere held

55 in abeyance, ~~all~~ dismissed charges ~~resulting from completion of a plea~~

55a ~~in abeyance~~, and charges

56 without a known disposition.

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

58 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**

59 **limitations -- Sanctions.**

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

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

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

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

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

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

77 (3) Any licensee whose license to practice an occupation or profession regulated by
78 this title has been suspended, revoked, or restricted may apply for reinstatement of the license
79 at reasonable intervals and upon compliance with any conditions imposed upon the licensee by
80 statute, rule, or terms of the license suspension, revocation, or restriction.

81 (4) The division may issue cease and desist orders to:

82 (a) [~~to~~] a licensee or applicant who may be disciplined under Subsection (1) or (2);

83 (b) [~~to~~] any person who engages in or represents himself to be engaged in an
84 occupation or profession regulated under this title; and

85 (c) [~~to~~] any person who otherwise violates this title or any rules adopted under this title.

86 (5) (a) The division may not take disciplinary action against any person for
87 unprofessional or unlawful conduct under this title, unless the division enters into a stipulated
88 agreement or initiates an adjudicative proceeding regarding the conduct within four years after
89 the conduct is reported to the division, except under Subsection (5)(b).

90 (b) The division may not take disciplinary action against any person for unprofessional
91 or unlawful conduct more than 10 years after the occurrence of the conduct, unless the
92 proceeding is in response to a civil or criminal judgment or settlement and the proceeding is
93 initiated within one year following the judgment or settlement.

94 Section 3. Section **58-31b-201** is amended to read:

95 **58-31b-201. Board.**

96 (1) There is created the Board of Nursing that consists of the following 11 members:

97 (a) nine nurses in a manner as may be further defined in division rule; and

98 (b) two members of the public.

99 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

100 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and
101 58-1-203 and shall:

102 (a) (i) recommend to the division minimum standards for educational programs
103 qualifying a person for licensure or certification under this chapter;

104 (ii) recommend to the division denial, approval, or withdrawal of approval regarding
105 educational programs that meet or fail to meet the established minimum standards; and

106 (iii) designate one of its members on a permanent or rotating basis to:

107 (A) assist the division in reviewing complaints concerning the unlawful or
108 unprofessional conduct of a licensee; and

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

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

113 (4) (a) The director shall appoint an individual to serve ~~[as the executive administrator
114 of the Board of Nursing. Except when the board serves as a presiding officer in an adjudicative
115 procedure, the executive administrator shall serve as an ex officio member of the board and
116 shall] as an ex officio member of the Board of Nursing~~ to represent the position of the division
117 in matters considered by the board.

118 (b) The ~~[executive administrator]~~ ex officio member shall be a licensed registered
119 nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of
120 experience working in nursing administration or nursing education.

121 Section 4. Section **58-37-7.5** is amended to read:

122 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**

123 **Access -- Penalties.**

124 (1) As used in this section:

125 (a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.

126 (b) "Database" means the controlled substance database created in this section.

127 [~~(c) "Database manager" means the person responsible for operating the database, or~~
128 ~~the person's designee.~~]

129 [~~(d)~~ (c) "Division" means the Division of Occupational and Professional Licensing
130 created in Section 58-1-103.

131 [~~(e)~~ (d) "Health care facility" is as defined in Section 26-21-2.

132 [~~(f)~~ (e) "Mental health therapist" is as defined in Section 58-60-102.

133 [~~(g)~~ (f) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.

134 [~~(h)~~ (g) "Prospective patient" means a person who:

135 (i) is seeking medical advice, medical treatment, or medical services from a
136 practitioner; and

137 (ii) the practitioner described in Subsection (1)[~~(h)~~](g)(i) is considering accepting as a
138 patient.

139 [~~(i)~~ (h) "Substance abuse treatment program" is as defined in Section 62A-2-101.

140 (2) (a) There is created within the division a controlled substance database.

141 (b) (i) The division shall administer and direct the functioning of the database in
142 accordance with this section.

143 (ii) The division may under state procurement laws contract with another state agency
144 or private entity to establish, operate, or maintain the database.

145 (iii) The division in collaboration with the board shall determine whether to operate the
146 database within the division or contract with another entity to operate the database, based on an
147 analysis of costs and benefits.

148 (c) The purpose of the database is to contain data as described in this section regarding
149 every prescription for a controlled substance dispensed in the state to any person other than an
150 inpatient in a licensed health care facility.

151 (d) Data required by this section shall be submitted in compliance with this section to

152 the [~~manager of the database~~] division by the pharmacist in charge of the drug outlet where the
153 controlled substance is dispensed.

154 (3) The board shall advise the division regarding:

155 (a) establishing, maintaining, and operating the database;

156 (b) access to the database and how access is obtained; and

157 (c) control of information contained in the database.

158 (4) The pharmacist in charge shall, regarding each controlled substance dispensed by a
159 pharmacist under the pharmacist's supervision other than those dispensed for an inpatient at a
160 health care facility, submit to the [~~manager of the database~~] division the following information,
161 by a procedure and in a format established by the division:

162 (a) name of the prescribing practitioner;

163 (b) date of the prescription;

164 (c) date the prescription was filled;

165 (d) name of the person for whom the prescription was written;

166 (e) positive identification of the person receiving the prescription, including the type of
167 identification and any identifying numbers on the identification;

168 (f) name of the controlled substance;

169 (g) quantity of controlled substance prescribed;

170 (h) strength of controlled substance;

171 (i) quantity of controlled substance dispensed;

172 (j) dosage quantity and frequency as prescribed;

173 (k) name of drug outlet dispensing the controlled substance;

174 (l) name of pharmacist dispensing the controlled substance; and

175 (m) other relevant information as required by division rule.

176 (5) The division shall maintain the database in an electronic file or by other means
177 established by the division to facilitate use of the database for identification of:

178 (a) prescribing practices and patterns of prescribing and dispensing controlled
179 substances;

180 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
181 manner;

182 (c) individuals receiving prescriptions for controlled substances from licensed

183 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
184 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
185 that controlled substance; and

186 (d) individuals presenting forged or otherwise false or altered prescriptions for
187 controlled substances to a pharmacy.

188 (6) (a) The division shall by rule establish the electronic format in which the
189 information required under this section shall be submitted to the [~~administrator of the database~~]
190 division.

191 (b) The division shall ensure the database system records and maintains for reference:

192 (i) identification of each person who requests or receives information from the
193 database;

194 (ii) the information provided to each person; and

195 (iii) the date and time the information is requested or provided.

196 (7) The division shall make rules to:

197 (a) effectively enforce the limitations on access to the database as described in
198 Subsection (8); and

199 (b) establish standards and procedures to ensure accurate identification of individuals
200 requesting information or receiving information without request from the database.

201 (8) The [~~manager of the database~~] division shall make information in the database
202 available only to the following persons, in accordance with the requirements of this section and
203 division rules:

204 (a) personnel of the division specifically assigned to conduct investigations related to
205 controlled substances laws under the jurisdiction of the division;

206 (b) authorized division personnel engaged in analysis of controlled substance
207 prescription information as a part of the assigned duties and responsibilities of their
208 employment;

209 (c) employees of the Department of Health whom the director of the Department of
210 Health assigns to conduct scientific studies regarding the use or abuse of controlled substances,
211 provided that the identity of the individuals and pharmacies in the database are confidential and
212 are not disclosed in any manner to any individual who is not directly involved in the scientific
213 studies;

214 (d) a licensed practitioner having authority to prescribe controlled substances, to the
215 extent the information:

216 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

217 (B) is sought by the practitioner for the purpose of:

218 (I) prescribing or considering prescribing any controlled substance to the current or
219 prospective patient;

220 (II) diagnosing the current or prospective patient;

221 (III) providing medical treatment or medical advice to the current or prospective
222 patient; or

223 (IV) determining whether the current or prospective patient:

224 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

225 or

226 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
227 substance from the practitioner;

228 (ii) (A) relates specifically to a former patient of the practitioner; and

229 (B) is sought by the practitioner for the purpose of determining whether the former
230 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled
231 substance from the practitioner;

232 (iii) relates specifically to an individual who has access to the practitioner's Drug
233 Enforcement Administration number, and the practitioner suspects that the individual may have
234 used the practitioner's Drug Enforcement Administration identification number to fraudulently
235 acquire or prescribe a controlled substance;

236 (iv) relates to the practitioner's own prescribing practices, except when specifically
237 prohibited by the division by administrative rule;

238 (v) relates to the use of the controlled substance database by an employee of the
239 practitioner, described in Subsection (8)(e); or

240 (vi) relates to any use of the practitioner's Drug Enforcement Administration
241 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
242 controlled substance;

243 (e) in accordance with Subsection (17), an employee of a practitioner described in
244 Subsection (8)(d), for a purpose described in Subsection (8)(d)(i) or (ii), if:

245 (i) the employee is designated by the practitioner as a person authorized to access the
246 information on behalf of the practitioner;

247 (ii) the practitioner provides written notice to the division of the identity of the
248 employee; and

249 (iii) the division:

250 (A) grants the employee access to the database; and

251 (B) provides the employee with a password that is unique to that employee to access
252 the database in order to permit the division to comply with the requirements of Subsection
253 (6)(b) with respect to the employee;

254 (f) a licensed pharmacist having authority to dispense controlled substances to the
255 extent the information is sought for the purpose of:

256 (i) dispensing or considering dispensing any controlled substance; or

257 (ii) determining whether a person:

258 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

259 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
260 substance from the pharmacist;

261 (g) federal, state, and local law enforcement authorities, and state and local
262 prosecutors, engaged as a specified duty of their employment in enforcing laws:

263 (i) regulating controlled substances; or

264 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

265 (h) a mental health therapist, if:

266 (i) the information relates to a patient who is:

267 (A) enrolled in a licensed substance abuse treatment program; and

268 (B) receiving treatment from, or under the direction of, the mental health therapist as
269 part of the patient's participation in the licensed substance abuse treatment program described
270 in Subsection (8)(h)(i)(A);

271 (ii) the information is sought for the purpose of determining whether the patient is
272 using a controlled substance while the patient is enrolled in the licensed substance abuse
273 treatment program described in Subsection (8)(h)(i)(A); and

274 (iii) the licensed substance abuse treatment program described in Subsection
275 (8)(h)(i)(A) is associated with a practitioner who:

276 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
277 pharmacist; and

278 (B) is available to consult with the mental health therapist regarding the information
279 obtained by the mental health therapist, under this Subsection (8)(h), from the database; and

280 (i) an individual who is the recipient of a controlled substance prescription entered into
281 the database, upon providing evidence satisfactory to the database manager that the individual
282 requesting the information is in fact the person about whom the data entry was made.

283 (9) ~~Any~~ A person who knowingly and intentionally releases any information in the
284 database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

285 (10) (a) ~~Any~~ A person who obtains or attempts to obtain information from the
286 database by misrepresentation or fraud is guilty of a third degree felony.

287 (b) ~~Any~~ A person who obtains or attempts to obtain information from the database
288 for a purpose other than a purpose authorized by this section or by rule is guilty of a third
289 degree felony.

290 (11) (a) (i) Except as provided in Subsection (11)(d), a person may not knowingly and
291 intentionally use, release, publish, or otherwise make available to any other person or entity
292 ~~any~~ information obtained from the database for ~~any~~ a purpose other than ~~those~~ a purpose
293 specified in Subsection (8).

294 (ii) Each separate violation of this Subsection (11) is a third degree felony and is also
295 subject to a civil penalty not to exceed \$5,000.

296 (b) The procedure for determining a civil violation of this Subsection (11) shall be in
297 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

298 (c) Civil penalties assessed under this Subsection (11) shall be deposited in the General
299 Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

300 (d) Nothing in this Subsection (11) prohibits a person who obtains information from
301 the database under Subsection (8)(d) or (e) from:

302 (i) including the information in the person's medical chart or file for access by a person
303 authorized to review the medical chart or file; or

304 (ii) providing the information to a person in accordance with the requirements of the
305 Health Insurance Portability and Accountability Act of 1996.

306 (12) (a) The failure of a pharmacist in charge to submit information to the database as

307 required under this section after the division has submitted a specific written request for the
308 information or when the division determines the individual has a demonstrable pattern of
309 failing to submit the information as required is grounds for the division to take the following
310 actions in accordance with Section 58-1-401:

311 (i) refuse to issue a license to the individual;
312 (ii) refuse to renew the individual's license;
313 (iii) revoke, suspend, restrict, or place on probation the license;
314 (iv) issue a public or private reprimand to the individual;
315 (v) issue a cease and desist order; and
316 (vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription
317 regarding which the required information is not submitted.

318 (b) Civil penalties assessed under Subsection (12)(a)(vi) shall be deposited in the
319 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

320 (c) The procedure for determining a civil violation of this Subsection (12) shall be in
321 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

322 (13) An individual who has submitted information to the database in accordance with
323 this section may not be held civilly liable for having submitted the information.

324 (14) All department and the division costs necessary to establish and operate the
325 database shall be funded by appropriations from:

326 (a) the Commerce Service Fund; and
327 (b) the General Fund.

328 (15) All costs associated with recording and submitting data as required in this section
329 shall be assumed by the submitting pharmacy.

330 (16) (a) Except as provided in Subsection (16)(b), data provided to, maintained in, or
331 accessed from the database that may be identified to, or with, a particular person is not subject
332 to discovery, subpoena, or similar compulsory process in ~~any~~ a civil, judicial, administrative,
333 or legislative proceeding, nor shall ~~any~~ an individual or organization with lawful access to the
334 data be compelled to testify with regard to the data.

335 (b) The restrictions in Subsection (16)(a) do not apply to:

336 (i) a criminal proceeding; or

337 (ii) a civil, judicial, or administrative action brought to enforce the provisions of this

338 section, Section 58-37-7.7, or Section 58-37-7.8.

339 (17) (a) A practitioner described in Subsection (8)(d) may designate up to three
340 employees to access information from the database under Subsection (8)(e).

341 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
342 Administrative Rulemaking Act, to establish background check procedures to determine
343 whether an employee designated under Subsection (8)(e)(i) should be granted access to the
344 database.

345 (c) The division shall grant an employee designated under Subsection (8)(e)(i) access
346 to the database, unless the division determines, based on a background check, that the
347 employee poses a security risk to the information contained in the database.

348 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
349 practitioner who designates an employee under Subsection (8)(e)(i), to pay for the costs
350 incurred by the division to conduct the background check and make the determination
351 described in Subsection (17)(c).

352 (18) (a) A person who is granted access to the database based on the fact that the
353 person is a licensed practitioner or a mental health therapist shall be denied access to the
354 database when the person is no longer licensed.

355 (b) A person who is granted access to the database based on the fact that the person is a
356 designated employee of a licensed practitioner shall be denied access to the database when the
357 practitioner is no longer licensed.

358 (19) A person who is a relative of a deceased individual is not entitled to access
359 information from the database relating to the deceased individual based on the fact or claim
360 that the person is:

- 361 (a) related to the deceased individual; or
- 362 (b) subrogated to the rights of the deceased individual.

363 Section 5. Section **58-55-302** is amended to read:

364 **58-55-302. Qualifications for licensure.**

365 (1) Each applicant for a license under this chapter shall:

- 366 (a) submit an application prescribed by the division;
- 367 (b) pay a fee as determined by the department under Section 63J-1-504;
- 368 (c) (i) meet the examination requirements established by rule by the commission with

369 the concurrence of the director, except for the classifications of apprentice plumber and
370 apprentice electrician for whom no examination is required; or

371 (ii) if required in Section 58-55-304, the individual qualifier must pass the required
372 examination if the applicant is a business entity;

373 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;

374 (e) if an applicant for a contractor's license:

375 (i) produce satisfactory evidence of financial responsibility, except for a construction
376 trades instructor for whom evidence of financial responsibility is not required;

377 (ii) produce satisfactory evidence of knowledge and experience in the construction
378 industry and knowledge of the principles of the conduct of business as a contractor, reasonably
379 necessary for the protection of the public health, safety, and welfare; and

380 (iii) be a licensed master electrician if an applicant for an electrical contractor's license
381 or a licensed master residential electrician if an applicant for a residential electrical contractor's
382 license; or

383 (iv) be a licensed master plumber if an applicant for a plumbing contractor's license or
384 a licensed master residential plumber if an applicant for a residential plumbing contractor's
385 license; and

386 (f) if an applicant for a construction trades instructor license, satisfy any additional
387 requirements established by rule.

388 (2) After approval of an applicant for a contractor's license by the applicable board and
389 the division, the applicant shall file the following with the division before the division issues
390 the license:

391 (a) proof of workers' compensation insurance which covers employees of the applicant
392 in accordance with applicable Utah law;

393 (b) proof of public liability insurance in coverage amounts and form established by rule
394 except for a construction trades instructor for whom public liability insurance is not required;
395 and

396 (c) proof of registration as required by applicable law with the:

397 (i) Utah Department of Commerce;

398 (ii) Division of Corporations and Commercial Code;

399 (iii) Unemployment Insurance Division in the Department of Workforce Services, for

400 purposes of Title 35A, Chapter 4, Employment Security Act;

401 (iv) State Tax Commission; and

402 (v) Internal Revenue Service.

403 (3) In addition to the general requirements for each applicant in Subsection (1),
404 applicants shall comply with the following requirements to be licensed in the following
405 classifications:

406 (a) (i) A master plumber shall produce satisfactory evidence that the applicant:

407 (A) has been a licensed journeyman plumber for at least two years and had two years of
408 supervisory experience as a licensed journeyman plumber in accordance with division rule;

409 (B) has received at least an associate of applied science degree or similar degree
410 following the completion of a course of study approved by the division and had one year of
411 supervisory experience as a licensed journeyman plumber in accordance with division rule; or

412 (C) meets the qualifications determined by the division in collaboration with the board
413 to be equivalent to Subsection (3)(a)(i)(A) or (B).

414 (ii) An individual holding a valid Utah license as a journeyman plumber, based on at
415 least four years of practical experience as a licensed apprentice under the supervision of a
416 licensed journeyman plumber and four years as a licensed journeyman plumber, in effect
417 immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current
418 master plumber license under this chapter, and satisfies the requirements of this Subsection
419 (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

420 (iii) An individual holding a valid plumbing contractor's license or residential
421 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
422 2008:

423 (A) considered to hold a current master plumber license under this chapter if licensed
424 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this
425 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
426 58-55-303; and

427 (B) considered to hold a current residential master plumber license under this chapter if
428 licensed as a residential plumbing contractor and a residential journeyman plumber, and
429 satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of
430 that license under Section 58-55-303.

431 (b) A master residential plumber applicant shall produce satisfactory evidence that the
432 applicant:

433 (i) has been a licensed residential journeyman plumber for at least two years and had
434 two years of supervisory experience as a licensed residential journeyman plumber in
435 accordance with division rule; or

436 (ii) meets the qualifications determined by the division in collaboration with the board
437 to be equivalent to Subsection (3)(b)(i).

438 (c) A journeyman plumber applicant shall produce satisfactory evidence of:

439 (i) successful completion of the equivalent of at least four years of full-time training
440 and instruction as a licensed apprentice plumber under supervision of a licensed master
441 plumber or journeyman plumber and in accordance with a planned program of training
442 approved by the division;

443 (ii) at least eight years of full-time experience approved by the division in collaboration
444 with the Plumbers Licensing Board; or

445 (iii) satisfactory evidence of meeting the qualifications determined by the board to be
446 equivalent to Subsection (3)(c)(i) or (c)(ii).

447 (d) A residential journeyman plumber shall produce satisfactory evidence of:

448 (i) completion of the equivalent of at least three years of full-time training and
449 instruction as a licensed apprentice plumber under the supervision of a licensed residential
450 master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in
451 accordance with a planned program of training approved by the division;

452 (ii) completion of at least six years of full-time experience in a maintenance or repair
453 trade involving substantial plumbing work; or

454 (iii) meeting the qualifications determined by the board to be equivalent to Subsection
455 (3)(d)(i) or (d)(ii).

456 (e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be
457 in accordance with the following:

458 (i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be
459 under the immediate supervision of a licensed master plumber, licensed residential master
460 plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

461 (ii) a licensed apprentice plumber in the fourth through tenth year of training may work

462 without supervision for a period not to exceed eight hours in any 24-hour period, but if the
463 apprentice does not become a licensed journeyman plumber or licensed residential journeyman
464 plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer
465 applies.

466 (f) A master electrician applicant shall produce satisfactory evidence that the applicant:

467 (i) is a graduate electrical engineer of an accredited college or university approved by
468 the division and has one year of practical electrical experience as a licensed apprentice
469 electrician;

470 (ii) is a graduate of an electrical trade school, having received an associate of applied
471 sciences degree following successful completion of a course of study approved by the division,
472 and has two years of practical experience as a licensed journeyman electrician;

473 (iii) has four years of practical experience as a journeyman electrician; or

474 (iv) meets the qualifications determined by the board to be equivalent to Subsection
475 (3)(f)(i), (ii), or (iii).

476 (g) A master residential electrician applicant shall produce satisfactory evidence that
477 the applicant:

478 (i) has at least two years of practical experience as a residential journeyman electrician;

479 or

480 (ii) meets the qualifications determined by the board to be equivalent to this practical
481 experience.

482 (h) A journeyman electrician applicant shall produce satisfactory evidence that the
483 applicant:

484 (i) has successfully completed at least four years of full-time training and instruction as
485 a licensed apprentice electrician under the supervision of a master electrician or journeyman
486 electrician and in accordance with a planned training program approved by the division;

487 (ii) has at least eight years of full-time experience approved by the division in
488 collaboration with the Electricians Licensing Board; or

489 (iii) meets the qualifications determined by the board to be equivalent to Subsection
490 (3)(h)(i) or (ii).

491 (i) A residential journeyman electrician applicant shall produce satisfactory evidence
492 that the applicant:

493 (i) has successfully completed two years of training in an electrical training program
494 approved by the division;

495 (ii) has four years of practical experience in wiring, installing, and repairing electrical
496 apparatus and equipment for light, heat, and power under the supervision of a licensed master,
497 journeyman, residential master, or residential journeyman electrician; or

498 (iii) meets the qualifications determined by the division and applicable board to be
499 equivalent to Subsection (3)(i)(i) or (ii).

500 (j) The conduct of licensed apprentice electricians and their licensed supervisors shall
501 be in accordance with the following:

502 (i) A licensed apprentice electrician shall be under the immediate supervision of a
503 licensed master, journeyman, residential master, or residential journeyman electrician. An
504 apprentice in the fourth year of training may work without supervision for a period not to
505 exceed eight hours in any 24-hour period.

506 (ii) A licensed master, journeyman, residential master, or residential journeyman
507 electrician may have under immediate supervision on a residential project up to three licensed
508 apprentice electricians.

509 (iii) A licensed master or journeyman electrician may have under immediate
510 supervision on nonresidential projects only one licensed apprentice electrician.

511 (k) An alarm company applicant shall:

512 (i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of
513 the applicant who:

514 (A) demonstrates 6,000 hours of experience in the alarm company business;

515 (B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm
516 company business or in a construction business; and

517 (C) passes an examination component established by rule by the commission with the
518 concurrence of the director;

519 (ii) if a corporation, provide:

520 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
521 of all corporate officers, directors, and those responsible management personnel employed
522 within the state or having direct responsibility for managing operations of the applicant within
523 the state; and

524 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
525 of all shareholders owning 5% or more of the outstanding shares of the corporation, except this
526 shall not be required if the stock is publicly listed and traded;

527 (iii) if a limited liability company, provide:

528 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
529 of all company officers, and those responsible management personnel employed within the
530 state or having direct responsibility for managing operations of the applicant within the state;
531 and

532 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
533 of all individuals owning 5% or more of the equity of the company;

534 (iv) if a partnership, provide the names, addresses, dates of birth, Social Security
535 numbers, and fingerprint cards of all general partners, and those responsible management
536 personnel employed within the state or having direct responsibility for managing operations of
537 the applicant within the state;

538 (v) if a proprietorship, provide the names, addresses, dates of birth, Social Security
539 numbers, and fingerprint cards of the proprietor, and those responsible management personnel
540 employed within the state or having direct responsibility for managing operations of the
541 applicant within the state;

542 (vi) if a trust, provide the names, addresses, dates of birth, Social Security numbers,
543 and fingerprint cards of the trustee, and those responsible management personnel employed
544 within the state or having direct responsibility for managing operations of the applicant within
545 the state;

546 [~~(vi)~~] (vii) be of good moral character in that officers, directors, shareholders described
547 in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management
548 personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or
549 any other crime that when considered with the duties and responsibilities of an alarm company
550 is considered by the board to indicate that the best interests of the public are served by granting
551 the applicant a license;

552 [~~(vii)~~] (viii) document that none of the applicant's officers, directors, shareholders
553 described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible
554 management personnel have been declared by any court of competent jurisdiction incompetent

555 by reason of mental defect or disease and not been restored;

556 [~~viii~~] (ix) document that none of the applicant's officers, directors, shareholders

557 described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management

558 personnel are currently suffering from habitual drunkenness or from drug addiction or

559 dependence;

560 [~~ix~~] (x) file and maintain with the division evidence of:

561 (A) comprehensive general liability insurance in form and in amounts to be established

562 by rule by the commission with the concurrence of the director;

563 (B) workers' compensation insurance that covers employees of the applicant in

564 accordance with applicable Utah law; and

565 (C) registration as is required by applicable law with the:

566 (I) Division of Corporations and Commercial Code;

567 (II) Unemployment Insurance Division in the Department of Workforce Services, for

568 purposes of Title 35A, Chapter 4, Employment Security Act;

569 (III) State Tax Commission; and

570 (IV) Internal Revenue Service; and

571 [~~x~~] (xi) meet with the division and board.

572 (l) Each applicant for licensure as an alarm company agent shall:

573 (i) submit an application in a form prescribed by the division accompanied by

574 fingerprint cards;

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

576 (iii) be of good moral character in that the applicant has not been convicted of a felony,

577 a misdemeanor involving moral turpitude, or any other crime that when considered with the

578 duties and responsibilities of an alarm company agent is considered by the board to indicate

579 that the best interests of the public are served by granting the applicant a license;

580 (iv) not have been declared by any court of competent jurisdiction incompetent by

581 reason of mental defect or disease and not been restored;

582 (v) not be currently suffering from habitual drunkenness or from drug addiction or

583 dependence; and

584 (vi) meet with the division and board if requested by the division or the board.

585 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

586 division may make rules establishing when Federal Bureau of Investigation records shall be
587 checked for applicants as an alarm company or alarm company agent.

588 (5) To determine if an applicant meets the qualifications of Subsections (3)(k)~~(vi)~~
589 (vii) and (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint
590 cards to the Department of Public Safety with the division's request to:

591 (a) conduct a search of records of the Department of Public Safety for criminal history
592 information relating to each applicant for licensure as an alarm company or alarm company
593 agent and each applicant's officers, directors, shareholders described in Subsection
594 (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

595 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
596 requiring a check of records of the F.B.I. for criminal history information under this section.

597 (6) The Department of Public Safety shall send to the division:

598 (a) a written record of criminal history, or certification of no criminal history record, as
599 contained in the records of the Department of Public Safety in a timely manner after receipt of
600 a fingerprint card from the division and a request for review of Department of Public Safety
601 records; and

602 (b) the results of the F.B.I. review concerning an applicant in a timely manner after
603 receipt of information from the F.B.I.

604 (7) (a) The division shall charge each applicant for licensure as an alarm company or
605 alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of
606 performing the records reviews under this section.

607 (b) The division shall pay the Department of Public Safety the costs of all records
608 reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews
609 under this section.

610 (8) Information obtained by the division from the reviews of criminal history records of
611 the Department of Public Safety and the F.B.I. shall be used or disseminated by the division
612 only for the purpose of determining if an applicant for licensure as an alarm company or alarm
613 company agent is qualified for licensure.

614 (9) (a) An application for licensure under this chapter shall be denied if:

615 (i) the applicant has had a previous license, which was issued under this chapter,
616 suspended or revoked within one year prior to the date of the applicant's application;

617 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and
618 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
619 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
620 status, performing similar functions, or directly or indirectly controlling the applicant has
621 served in any similar capacity with any person or entity which has had a previous license,
622 which was issued under this chapter, suspended or revoked within one year prior to the date of
623 the applicant's application; or

624 (iii) (A) the applicant is an individual or sole proprietorship; and
625 (B) any owner or agent acting as a qualifier has served in any capacity listed in
626 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
627 this chapter, suspended or revoked within one year prior to the date of the applicant's
628 application.

629 (b) An application for licensure under this chapter shall be reviewed by the appropriate
630 licensing board prior to approval if:

631 (i) the applicant has had a previous license, which was issued under this chapter,
632 suspended or revoked more than one year prior to the date of the applicant's application;

633 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

634 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
635 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
636 status, performing similar functions, or directly or indirectly controlling the applicant has
637 served in any similar capacity with any person or entity which has had a previous license,
638 which was issued under this chapter, suspended or revoked more than one year prior to the date
639 of the applicant's application; or

640 (iii) (A) the applicant is an individual or sole proprietorship; and

641 (B) any owner or agent acting as a qualifier has served in any capacity listed in
642 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
643 this chapter, suspended or revoked more than one year prior to the date of the applicant's
644 application.

645 Section 6. Section **58-56-3** is amended to read:

646 **58-56-3. Definitions.**

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

648 (1) (a) "Adopted code" means:
649 (i) (A) a new edition of or amendment to an existing code, including the standards and
650 specifications contained in the code, adopted by the Legislature under Section 58-56-7; and
651 (B) administered by the division under Section 58-56-6; and
652 (ii) adopted by a nationally recognized code authority, including:
653 (A) a building code;
654 (B) the National Electrical Code promulgated by the National Fire Protection
655 Association;
656 (C) a residential one and two family dwelling code;
657 (D) a plumbing code;
658 (E) a mechanical code;
659 (F) a fuel gas code;
660 (G) an energy conservation code; and
661 (H) a manufactured housing installation standard code.
662 (b) "Adopted code" includes:
663 (i) a fire code administered by the Fire Prevention Board under Section 53-7-204; and
664 (ii) a code listed in Subsection (1)(a)(ii) that was adopted or amended by the division
665 and Uniform Building Code Commission or the Fire Protection Board before May 12, 2009.
666 (2) "Agricultural use" means a use that relates to the tilling of soil and raising of crops,
667 or keeping or raising domestic animals.
668 [~~2~~] (3) (a) (i) "Approved code" means a code, including the standards and
669 specifications contained in the code, approved by the division under Section 58-56-4 for use by
670 a compliance agency; and
671 (ii) administered by the division under Section 58-56-6.
672 (b) "Approved code" does not include an adopted code listed under Subsection (1)(b).
673 [~~3~~] (4) "Board" means the Fire Prevention Board created in Section 53-7-203.
674 [~~4~~] (5) "Building" means a structure used or intended for supporting or sheltering any
675 use or occupancy and any improvements attached to it.
676 [~~5~~] (6) "Commission" means the Uniform Building Code Commission created under
677 this chapter.
678 [~~6~~] (7) "Compliance agency" means:

679 (a) an agency of the state or any of its political subdivisions which issues permits for
680 construction regulated under the codes;

681 (b) any other agency of the state or its political subdivisions specifically empowered to
682 enforce compliance with the codes; or

683 (c) any other state agency which chooses to enforce codes adopted under this chapter
684 by authority given the agency under a title other than Title 58, Occupations and Professions.

685 [~~(7)~~] (8) "Factory built housing" means manufactured homes or mobile homes.

686 [~~(8)~~] (9) (a) "Factory built housing set-up contractor" means an individual licensed by
687 the division to set up or install factory built housing on a temporary or permanent basis.

688 (b) The scope of the work included under the license includes the placement or
689 securing, or both placement and securing, of the factory built housing on a permanent or
690 temporary foundation, securing the units together if required, and connection of the utilities to
691 the factory built housing unit, but does not include site preparation, construction of a
692 permanent foundation, and construction of utility services to the near proximity of the factory
693 built housing unit.

694 (c) If a dealer is not licensed as a factory built housing set-up contractor, that individual
695 must subcontract the connection services to individuals who are licensed by the division to
696 perform those specific functions under Title 58, Chapter 55, Utah Construction Trades
697 Licensing Act.

698 [~~(9)~~] (10) "HUD code" means the National Manufactured Housing Construction and
699 Safety Standards Act, 42 U.S.C. Sec. 5401 et seq.

700 [~~(10)~~] (11) "Legislative action" means the Legislature's:

701 (a) adoption of a new adopted code;

702 (b) adoption of an amendment to an existing adopted code;

703 (c) repeal of an adopted code; or

704 (d) repeal of a provision of an adopted code.

705 [~~(11)~~] (12) "Local regulator" means each political subdivision of the state which is
706 empowered to engage in the regulation of construction, alteration, remodeling, building, repair,
707 and other activities subject to the codes.

708 [~~(12)~~] (13) (a) "Manufactured home" means a transportable factory built housing unit
709 constructed on or after June 15, 1976, according to the HUD Code, in one or more sections,

710 which:

711 (i) in the traveling mode, is eight body feet or more in width or 40 body feet or more in
712 length, or when erected on site, is 400 or more square feet; and

713 (ii) is built on a permanent chassis and designed to be used as a dwelling with or
714 without a permanent foundation when connected to the required utilities, and includes the
715 plumbing, heating, air-conditioning, and electrical systems.

716 (b) Manufactured homes constructed on or after June 15, 1976, shall be identifiable by
717 the manufacturer's data plate bearing the date the unit was manufactured and a HUD label
718 attached to the exterior of the home certifying the home was manufactured to HUD standards.

719 [~~(13)~~] (14) "Mobile home" means a transportable factory built housing unit built prior
720 to June 15, 1976, in accordance with a state mobile home code which existed prior to the HUD
721 Code.

722 [~~(14)~~] (15) "Modular unit" means a structure built from sections which are
723 manufactured in accordance with the construction standards adopted pursuant to Section
724 58-56-4 and transported to a building site, the purpose of which is for human habitation,
725 occupancy, or use.

726 (16) "Not for human occupancy" means use of a structure for purposes other than
727 protection or comfort of human beings, but allows people to enter the structure for:

728 (a) maintenance and repair; and

729 (b) the care of livestock, crops, or equipment intended for agricultural use which are
730 kept there.

731 [~~(15)~~] (17) "Opinion" means a written, nonbinding, and advisory statement issued by
732 the commission concerning an interpretation of the meaning of the codes or the application of
733 the codes in a specific circumstance issued in response to a specific request by a party to the
734 issue.

735 [~~(16)~~] (18) "State regulator" means an agency of the state which is empowered to
736 engage in the regulation of construction, alteration, remodeling, building, repair, and other
737 activities subject to the codes adopted pursuant to this chapter.

738 Section 7. Section **58-56-4** is amended to read:

739 **58-56-4. Definitions -- Adoption of building codes -- Amendments -- Approval of**
740 **other codes -- Exemptions.**

741 (1) As used in this section[~~:(a) "agricultural use" means a use that relates to the tilling~~
742 ~~of soil and raising of crops, or keeping or raising domestic animals; (b) "not for human~~
743 ~~occupancy" means use of a structure for purposes other than protection or comfort of human~~
744 ~~beings, but allows people to enter the structure for: (i) maintenance and repair; and (ii) the~~
745 ~~care of livestock, crops, or equipment intended for agricultural use which are kept there; and~~
746 ~~(c)]₂, "residential area" means land that is not used for an agricultural use and is:~~

747 [~~(i)-(A)] (a) (i) within the boundaries of a city or town; and~~

748 [~~(B)] (ii) less than five contiguous acres;~~

749 [~~(i)-(A)] (b) (i) within a subdivision for which the county has approved a subdivision
750 plat under Title 17, Chapter 27a, Part 6, Subdivisions; and~~

751 [~~(B)] (ii) less than two contiguous acres; or~~

752 [~~(iii)] (c) not located in whole or in part in an agricultural protection area created under
753 Title 17, Chapter 41, Agriculture and Industrial Protection Areas.~~

754 (2) A person shall follow an adopted code when:

755 (a) new construction is involved; and

756 (b) the owner of an existing building, or the owner's agent, is voluntarily engaged in:

757 (i) the repair, renovation, remodeling, alteration, enlargement, rehabilitation,
758 conservation, or reconstruction of the building; or

759 (ii) changing the character or use of the building in a manner which increases the
760 occupancy loads, other demands, or safety risks of the building.

761 (3) (a) Beginning May 12, 2009, the board and commission shall, in accordance with
762 Sections 53-7-204 and 58-56-5, make recommendations to the Business and Labor Interim
763 Committee as to whether or not the Legislature should take legislative action.

764 (b) (i) If the Business and Labor Interim Committee decides to recommend legislative
765 action to the Legislature, the Business and Labor Interim Committee shall prepare legislation
766 for consideration by the Legislature in the next general session.

767 (ii) The legislation described in Subsection (3)(b)(i) shall direct:

768 (A) the division to administer an adopted code, excluding the fire code, in accordance
769 with legislative action approved by the Legislature; and

770 (B) the board to administer an adopted fire code in accordance with legislative action
771 approved by the Legislature.

772 (4) (a) Notwithstanding Subsection (3), the commission may, in accordance with Title
773 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt an adopted code, except the fire
774 code, if the commission determines that waiting for legislative action in the next general
775 legislative session under Subsection (3) would:

- 776 (i) cause an imminent peril to the public health, safety, or welfare; or
- 777 (ii) place a person in violation of federal or other state law.

778 (b) If the commission adopts an adopted code under Subsection (4)(a), the commission
779 shall file with the division:

- 780 (i) the text of the adopted code; and
- 781 (ii) an analysis that includes the specific reasons and justifications for its findings.

782 (c) The division shall, in accordance with Subsection (4)(b):

- 783 (i) publish the adopted code in accordance with Section 58-56-6; and
- 784 (ii) notify the Business and Labor Interim Committee of the adoption, including a copy
785 of the commission's analysis described in Subsection (5)(b).

786 (d) If not formally adopted by the Legislature at its next annual general session, an
787 adopted code adopted under this Subsection (4) is repealed effective at midnight on the last day
788 that the Legislature adjourns sine die at its next annual general session.

789 (5) (a) Notwithstanding Subsection (3), the board may, in accordance with Title 63G,
790 Chapter 3, Utah Administrative Rulemaking Act, adopt a fire code, if the board determines that
791 waiting for legislative action in the next general legislative session under Subsection (3) would:

- 792 (i) cause an imminent peril to the public health, safety, or welfare; or
- 793 (ii) place a person in violation of federal or other state law.

794 (b) The board shall:

- 795 (i) publish the adopted fire code; and
- 796 (ii) notify the Business and Labor Interim Committee of the adoption, including a copy
797 of an analysis by the board identifying specific reasons and justifications for its findings.

798 (c) If not formally adopted by the Legislature at its next annual general session, a fire
799 code adopted under this Subsection (5) is repealed effective at midnight on the last day that the
800 Legislature adjourns sine die at its next annual general session.

801 (6) (a) The division, in consultation with the commission, has discretion to approve,
802 without adopting, certain approved codes, including specific editions of the approved codes, for

803 use by a compliance agency.

804 (b) Under Subsection (6)(a), a compliance agency has the discretion to:

805 (i) adopt an ordinance requiring removal, demolition, or repair of a building, according
806 to an adopted code;

807 (ii) adopt, by ordinance or rule, a dangerous building code; or

808 (iii) adopt, by ordinance or rule, a building rehabilitation code.

809 (7) (a) Except in a residential area, a structure used solely in conjunction with
810 agriculture use, and not for human occupancy, is exempted from the permit requirements of an
811 adopted code.

812 (b) Notwithstanding Subsection (7)(a), unless otherwise exempted, plumbing,
813 electrical, and mechanical permits may be required when that work is included in the structure.

Legislative Review Note
as of 1-5-10 8:21 AM

Office of Legislative Research and General Counsel

H.B. 193 - Occupations and Professions Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
