

1 OCCUPATIONS AND PROFESSIONS AMENDMENTS

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Michael T. Morley

5 Senate Sponsor: J. Stuart Adams

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7 LONG TITLE

8 General Description:

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

11 Highlighted Provisions:

12 This bill:

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

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

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

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

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

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

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

27 ▶ modifies continuing education requirement provisions for licensed elevator

H.B. 243



28 mechanics and elevator contract licensees;

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

30       ▶ modifies the term of license provisions; and

31       ▶ makes certain technical changes.

32 **Money Appropriated in this Bill:**

33       None

34 **Other Special Clauses:**

35       None

36 **Utah Code Sections Affected:**

37 AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 ENACTS:

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

55 REPEALS:

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

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

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

- 59           **58-39a-4**, as enacted by Laws of Utah 1991, Chapter 279
- 60           **58-39a-5**, as last amended by Laws of Utah 2009, Chapter 183
- 61           **58-39a-5.5**, as last amended by Laws of Utah 1995, Chapter 12
- 62           **58-39a-6**, as last amended by Laws of Utah 1995, Chapter 12

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

65           Section 1. Section **38-11-206** is amended to read:

66           **38-11-206. Limitations on fund balance -- Payment of special assessments.**

67           (1) (a) If on [~~December 31~~] June 30 of any year the balance in the fund is less than  
68 \$1,500,000, the division shall make a special assessment against all qualified beneficiaries in  
69 an amount that will restore the unencumbered fund balance to not less than \$2,000,000 or more  
70 than \$2,500,000.

71           (b) The amount of the special assessment shall be determined by the division under  
72 Section 63J-1-504 after consultation with the board.

73           (2) Special assessments made under this section shall be due and payable on [~~May 1~~]  
74 December 1 following assessment.

75           (3) The fund balance limitations set forth in Subsection (1)(a) shall be used by the  
76 division only for the purpose of determining the amount of any special assessment and do not  
77 prohibit the fund balance from exceeding \$2,500,000 or falling below \$2,000,000.

78           Section 2. Section **58-1-201** is amended to read:

79           **58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies --**  
80 **Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in**  
81 **professional school teaching continuing education prohibited.**

82           (1) (a) (i) The executive director shall appoint the members of the boards established  
83 under this title.

84           (ii) In appointing these members the executive director shall give consideration to  
85 recommendations by members of the respective occupations and professions and by their  
86 organizations.

87           (b) Each board shall be composed of five members, four of whom shall be licensed or  
88 certified practitioners in good standing of the occupation or profession the board represents,  
89 and one of whom shall be a member of the general public, unless otherwise provided under the

90 specific licensing chapter.

91 (c) (i) The names of all persons appointed to boards shall be submitted to the governor  
92 for confirmation or rejection.

93 (ii) If an appointee is rejected by the governor, the executive director shall appoint  
94 another person in the same manner as set forth in Subsection (1)(a).

95 (2) (a) (i) Except as required by Subsection (2)(b), as terms of current board members  
96 expire, the executive director shall appoint each new member or reappointed member to a  
97 four-year term.

98 (ii) Upon the expiration of the term of a board member, the board member shall  
99 continue to serve until a successor is appointed, but for a period not to exceed six months from  
100 the expiration date of the member's term.

101 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,  
102 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
103 of board members are staggered so that approximately half of the board is appointed every two  
104 years.

105 (c) A board member may not serve more than two consecutive terms, and a board  
106 member who ceases to serve on a board may not serve again on that board until after the  
107 expiration of a two-year period beginning from that cessation of service.

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

110 (ii) After filling that term, the replacement member may be appointed for only one  
111 additional full term.

112 (e) If a board member fails or refuses to fulfill the responsibilities and duties of a board  
113 member, including the attendance at board meetings, the executive director with the approval  
114 of the board may remove the board member and replace the member in accordance with this  
115 section.

116 (3) A majority of the board members constitutes a quorum. A quorum is sufficient  
117 authority for the board to act.

118 (4) A member may not receive compensation or benefits for the member's service, but  
119 may receive per diem and travel expenses in accordance with:

120 (a) Section 63A-3-106;

121 (b) Section 63A-3-107; and

122 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
123 63A-3-107.

124 (5) Each board shall annually designate one of its members to serve as chair for a  
125 one-year period.

126 (6) A board member may not be a member of the faculty of or have any financial  
127 interest in any vocational or professional college or school which provides continuing  
128 education to any licensee if that continuing education is required by statute or rule.

129 Section 3. Section **58-1-301.7** is enacted to read:

130 **58-1-301.7. Change of information.**

131 (1) (a) An applicant, licensee, or certificate holder shall send the division a signed  
132 statement in the form required by the division notifying the division within 10 business days of  
133 any change of a mailing address.

134 (b) When providing a mailing address, the individual may provide a post office box or  
135 other mail drop location.

136 (2) An applicant, licensee, or certificate holder is considered to have received a  
137 notification that has been sent to the last mailing address furnished to the division by the  
138 applicant, licensee, or certificate holder.

139 Section 4. Section **58-1-401** is amended to read:

140 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**  
141 **limitations -- Sanctions.**

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

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

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

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

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

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

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

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

164 (a) a licensee or applicant who may be disciplined under Subsection (1) or (2);

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

167 (c) any person who otherwise violates this title or any rules adopted under this title.

168 (5) The division may impose an administrative penalty in accordance with Section  
169 58-1-502.

170 [~~5~~] (6) (a) The division may not take disciplinary action against any person for  
171 unprofessional or unlawful conduct under this title, unless the division enters into a stipulated  
172 agreement or initiates an adjudicative proceeding regarding the conduct within four years after  
173 the conduct is reported to the division, except under Subsection [~~5~~] (6)(b).

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

178 Section 5. Section **58-1-404** is amended to read:

179 **58-1-404. Diversion -- Procedure.**

180 (1) As used in this section, "diversion" means suspending action to discipline a  
181 licensee who is or could be charged in a Notice of Agency Action with certain offenses within  
182 the category of unprofessional or unlawful conduct on the condition that the licensee agrees to

183 participate in an educational or rehabilitation program or fulfill some other condition.

184 (2) (a) (i) The director may establish, as circumstances require, a diversion advisory  
185 committee for each occupation or profession or similar groups of occupations or professions  
186 licensed by the division.

187 (ii) The committees shall assist the director in the administration of this section.

188 (b) (i) Each committee shall consist of at least three licensees from the same or similar  
189 occupation or profession as the person whose conduct is the subject of the committee's  
190 consideration.

191 (ii) The director shall appoint the members of a diversion advisory committee from  
192 nominations submitted by the corresponding board established for the same or similar  
193 occupation or profession under Section 58-1-201 or from other qualified nominees developed  
194 by or submitted to the division.

195 (iii) Committee members may not serve concurrently as members of the corresponding  
196 board.

197 (iv) Committee members shall serve voluntarily without remuneration.

198 (v) The director may:

199 (A) dissolve any diversion advisory committee;

200 (B) remove or request the replacement of any member of a committee; and

201 (C) establish any procedure that is necessary and proper for a committee's  
202 administration.

203 (3) The director may, after consultation with the appropriate diversion advisory  
204 committee and by written agreement with the licensee, divert the licensee to a diversion  
205 program:

206 (a) at any time after receipt by the division of a complaint against the licensee when no  
207 adjudicative proceeding has been commenced;

208 (b) at any time prior to the conclusion of a hearing under Section 63G-4-206 when an  
209 adjudicative proceeding has been commenced against the licensee; or

210 (c) after a self-referral by a licensee who is not the subject of a current investigation,  
211 complaint, or adjudicative proceeding.

212 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
213 the division shall define by rule the particular offenses within the category of unprofessional or

214 unlawful conduct which may be subject to diversion.

215 (b) A licensee may be eligible for a diversion program only once for the same or  
216 similar offense, whether the diversion program was in this state or another jurisdiction, and is  
217 not eligible if previously disciplined by the division, by a licensing agency of another state, or  
218 by a federal government agency for the same or a similar offense.

219 (c) The term of a diversion agreement shall be five years or less, but may be extended  
220 for an additional period of time as agreed to by the parties in writing.

221 (d) A decision by the director not to divert a licensee is not subject to appeal or judicial  
222 review.

223 (5) A licensee may be represented by counsel:

224 (a) during the negotiations for diversion;

225 (b) at the time of the execution of the diversion agreement; and

226 (c) at any hearing before the director relating to a diversion program.

227 (6) (a) As used in this section, "diversion agreement" means a written agreement  
228 between the division, through its director, and the licensee, which specifies formal terms and  
229 conditions the licensee must fulfill in order to comply with the diversion program.

230 (b) (i) A diversion agreement shall contain a full detailed statement of the requirements  
231 agreed to by the licensee and a full detailed stipulation of the facts upon which the diversion  
232 agreement is premised.

233 (ii) The facts stipulated in the diversion agreement shall constitute binding admissions  
234 of the licensee:

235 (A) in any proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion  
236 agreement and impose disciplinary sanctions against the licensee; and

237 (B) in any disciplinary proceeding based on unprofessional or unlawful conduct that is  
238 not the basis of the diversion agreement.

239 (c) The diversion agreement shall provide that if the licensee makes an intentional  
240 material misrepresentation of fact in the stipulation of facts contained in the diversion  
241 agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the  
242 diversion agreement and issue an order of license revocation.

243 (d) (i) The diversion agreement shall provide that if the licensee fails to comply with its  
244 terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the



245 diversion agreement and issue an order of license suspension, which shall be stayed in favor of  
246 an order of probation having the same terms as those which comprised the diversion  
247 agreement.

248 (ii) The division may waive and not include as probationary requirements any terms of  
249 the diversion agreement it does not consider necessary to protect the public.

250 (iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).

251 (e) The division director may not approve a diversion agreement unless the licensee, as  
252 part of the diversion agreement:

253 (i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter  
254 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was  
255 premised;

256 (ii) agrees to be subject to the procedures and remedies set forth in this section;

257 (iii) acknowledges an understanding of the consequences of making an intentional  
258 misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and

259 (iv) acknowledges an understanding of the consequences of failing to comply with the  
260 terms of the diversion agreement.

261 (7) (a) If the division and the licensee enter into a diversion agreement after the  
262 division has commenced an adjudicative proceeding against the licensee, the director shall stay  
263 that proceeding pending completion of the diversion agreement.

264 (b) The order staying the adjudicative proceeding shall be filed in that proceeding and  
265 may reference the diversion agreement.

266 (8) (a) Upon successful completion of a diversion agreement, the director shall dismiss  
267 any charges under the director's jurisdiction of unprofessional or unlawful conduct that were  
268 filed against the licensee.

269 (b) Whether or not an adjudicative proceeding had been commenced against the  
270 licensee, the division may not thereafter subject the licensee to disciplinary action for the  
271 conduct which formed the basis of the completed diversion agreement.

272 (c) Neither the execution of a diversion agreement nor the dismissal of filed charges  
273 constitute disciplinary action, and no report of either may be made to disciplinary databases.

274 (d) The division may consider the completion of a diversion program and the contents  
275 of the diversion agreement in determining the appropriate disciplinary action if the licensee is

276 charged in the future with the same or similar conduct.

277 (e) The order of dismissal shall be filed in the adjudicative proceeding in which the  
278 misconduct was charged and may reference the diversion agreement.

279 (9) (a) Acceptance of the licensee into diversion does not preclude the division from  
280 investigating or continuing to investigate the licensee for any unlawful or unprofessional  
281 conduct committed before, during, or after participation in the diversion program.

282 (b) Acceptance of the licensee into diversion does not preclude the division from  
283 taking disciplinary action or continuing to take disciplinary action against the licensee for  
284 unlawful or unprofessional conduct committed before, during, or after participation in the  
285 diversion program, except for that conduct which formed the basis for the diversion agreement.

286 (c) Any licensee terminated from the diversion program for failure to comply with the  
287 diversion agreement is subject to disciplinary action by the division for acts committed before,  
288 during, and after participation in the diversion program, including violations identified in the  
289 diversion agreement.

290 (10) The classification, retention, and disclosure of records relating to a licensee's  
291 participation in the diversion program is governed by Title 63G, Chapter 2, Government  
292 Records Access and Management Act, except that any provision in the diversion agreement  
293 which addresses access to or release of diversion records regarding the licensee shall govern  
294 the access to and release of those records.

295 (11) Notwithstanding any other provision of this section, the fact that the licensee  
296 completed a diversion program and the contents of the diversion agreement itself may be  
297 considered by the division in determining the appropriate disciplinary action if the licensee is  
298 charged in the future with the same or similar conduct.

299 (12) Meetings regarding the diversion program are not subject to Title 52, Chapter 4,  
300 Open and Public Meetings Act.

301 (13) (a) If, during the course of the diversion agreement, information is brought to the  
302 attention of the director that the licensee made an intentional material misrepresentation of fact  
303 in the stipulation of facts contained in the diversion agreement, the director shall cause to be  
304 served upon the licensee an order to show cause specifying the information relied upon by the  
305 director and setting a time and place for hearing to determine whether or not the licensee made  
306 the intentional material misrepresentation of fact and whether the agreement should be

307 terminated on that ground.

308 (b) Proceedings to terminate a diversion agreement on the grounds that the licensee  
309 made an intentional material misrepresentation of fact in the stipulation of facts contained in  
310 the diversion agreement and to issue an order of license revocation shall comply with Title  
311 63G, Chapter 4, Administrative Procedures Act, except as follows:

312 (i) the notice of agency action shall be in the form of an order to show cause, which  
313 shall contain all of the information specified in Subsection 63G-4-201(2), except a statement  
314 that a written response to the order to show cause is required;

315 (ii) no written response to the order to show cause is required;

316 (iii) discovery is prohibited, but the division may issue subpoenas or other orders to  
317 compel production of necessary evidence on behalf of either party and all parties shall have  
318 access to information contained in the division's diversion file to the extent permitted by law;

319 (iv) the hearing shall be held only after timely notice to all parties; and

320 (v) any agency review or reconsideration of an order terminating a diversion agreement  
321 or of an order of license revocation pursuant to this Subsection (13) shall be limited to the  
322 division director's findings of fact, conclusions of law, and order which arose out of the order  
323 to show cause proceeding.

324 (c) Upon finding the licensee made an intentional material misrepresentation of fact in  
325 the stipulation of facts contained in the diversion agreement and that terminating the agreement  
326 is in the best interest of the public, and issuing an order to that effect, the director shall issue an  
327 order of license revocation, revoking the licensee's professional license.

328 (d) The order terminating the diversion agreement and the order of license revocation  
329 shall include findings of fact and conclusions of law as determined by the director following  
330 the hearing or as otherwise stipulated and agreed to by the parties.

331 (e) If the diversion agreement being terminated was entered into after the division had  
332 commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall  
333 be considered to be merged into the order of license revocation and it may not constitute a basis  
334 for any separate disciplinary action against the licensee.

335 (f) The order terminating the diversion agreement and the order of license revocation  
336 shall notify the licensee of the right to request agency review or reconsideration.

337 (14) (a) If, during the course of the diversion agreement, information is brought to the

338 attention of the director that the licensee has violated the diversion agreement and if it appears  
339 in the best interest of the public to proceed with charges, the director, after consultation with  
340 the diversion advisory committee, shall cause to be served upon the licensee an order to show  
341 cause specifying the facts relied upon by the director and setting a time and place for hearing to  
342 determine whether or not the licensee has violated the diversion agreement and whether the  
343 agreement should be terminated.

344 (b) Proceedings to terminate a diversion agreement and to issue an order of license  
345 suspension and probation, and proceedings to terminate the probation and lift the stay of a  
346 license suspension, shall comply with Title 63G, Chapter 4, Administrative Procedures Act,  
347 except as follows:

348 (i) the notice of agency action shall be in the form of an order to show cause, which  
349 shall contain all of the information specified in Subsection 63G-4-201(2), except a statement  
350 that a written response to the order to show cause is required;

351 (ii) no written response to the order to show cause shall be required;

352 (iii) discovery is prohibited, but the division may issue subpoenas or other orders to  
353 compel production of necessary evidence on behalf of either party and all parties shall have  
354 access to information contained in the division's diversion file to the extent permitted by law;

355 (iv) the hearing shall be held only after timely notice to all parties; and

356 (v) any agency review or reconsideration of an order terminating a diversion agreement  
357 or of an order of license suspension and probation pursuant to this Subsection (14) shall be  
358 limited to the division director's findings of fact, conclusions of law, and order which arose out  
359 of the order to show cause proceeding.

360 (c) (i) Upon finding the licensee has violated the diversion agreement and that  
361 terminating the agreement is in the best interest of the public, and issuing an order to that  
362 effect, the director shall issue an order of license suspension, suspending the licensee's  
363 professional license, but shall stay that suspension in favor of an order of probation, consisting  
364 of the same terms as those which comprised the diversion agreement.

365 (ii) The period of probation shall be the time period which remained under the  
366 diversion agreement, or five years from the date of the order of license suspension and  
367 probation, whichever is longer, unless otherwise agreed by the parties.

368 (iii) The period of probation is tolled during any time in which the licensee does not

369 have an active license in the state.

370 (d) (i) The order terminating the diversion agreement and the order of license  
371 suspension and probation shall include findings of fact and conclusions of law as determined  
372 by the director following the hearing or as otherwise stipulated and agreed to by the parties.

373 (ii) The findings of fact may include those facts to which the licensee stipulated in the  
374 diversion agreement and any additional facts as the director may determine in the course of the  
375 hearing.

376 (e) If the diversion agreement being terminated was entered into after the division had  
377 commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall  
378 be considered to be merged into the order of license suspension and probation and it may not  
379 constitute a basis for any separate disciplinary action against the licensee.

380 (f) The order terminating the diversion agreement and the order of license suspension  
381 and probation shall notify the licensee of the right to request agency review or reconsideration.

382 (g) (i) The terms and conditions of the order of license suspension and probation may  
383 be amended by order of the director, pursuant to motion or stipulation of the parties.

384 (ii) The order of the director on the motion shall not be subject to agency review, but is  
385 subject to agency reconsideration under Section 63G-4-302.

386 (h) (i) If, during the course of probation, the director has reason to believe the licensee  
387 has violated the order of suspension and probation, the director shall cause to be served upon  
388 the licensee an order to show cause why the probation should not be terminated and the stay of  
389 suspension lifted.

390 (ii) The order to show cause shall specify the facts relied upon by the director and shall  
391 set a time and place for hearing before the director to determine whether or not the licensee has  
392 violated the order of suspension and probation and whether that order should be terminated and  
393 the stay of suspension lifted.

394 (15) (a) Nothing in this section precludes the division from issuing an emergency order  
395 pursuant to Section 63G-4-502.

396 (b) If the division issues an emergency order against a licensee who is subject to a  
397 diversion agreement with the division, that diversion agreement shall be immediately and  
398 automatically terminated upon the issuance of the emergency order, without compliance with  
399 the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

472 ~~or fraudulent;~~

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

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

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

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

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

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

479 ~~licensee's license;~~

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

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

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

483 ~~or device:~~

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

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

486 ~~the proposed treatment; or~~

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

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

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

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

491 ~~proposed treatment; [or]~~

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



493 prescription; or

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

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

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

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

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

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

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

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

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

510 (A) an uncontested citation;

511 (B) a stipulated settlement; or

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

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

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

518 (d) A citation shall:

519 (i) be in writing;

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

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

524 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

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

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

528 (f) (i) If within 20 calendar days from the service of the citation, the person to whom  
529 the citation was issued fails to request a hearing to contest the citation, the citation becomes the  
530 final order of the division and is not subject to further agency review.

531 (ii) The period to contest a citation may be extended by the division for cause.

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

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

536 (i) The division may not issue a citation under this section after the expiration of six  
537 months following the occurrence of a violation.

538 (j) The director or the director's designee shall assess fines according to the following:

539 (i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to \$1,000;

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

541 and

542 (iii) for any subsequent offense handled pursuant to Subsection (2)(a), a fine of up to  
543 \$2,000 for each day of continued offense.

544 (3) (a) An action for a first or second offense which has not yet resulted in a final order  
545 of the division may not preclude initiation of any subsequent action for a second or subsequent  
546 offense during the pendency of any preceding action.

547 (b) The final order on a subsequent action is considered a second or subsequent  
548 offense, respectively, provided the preceding action resulted in a first or second offense,  
549 respectively.

550 (4) (a) The director may collect a penalty that is not paid by:

551 (i) either referring the matter to a collection agency; or

552 (ii) bringing an action in the district court of the county in which the person against  
553 whom the penalty is imposed resides or in the county where the office of the director is located.

554 (b) Any county attorney or the attorney general of the state shall provide legal

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

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

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

558 Section ~~5~~ **[8]** ~~7~~ . Section **58-22-302** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

586 structural engineering;

587 (f) have successfully passed examinations established by rule by the division in  
588 collaboration with the board, except that prior to January 1, 2009, an applicant for licensure  
589 may submit a signed affidavit in a form prescribed by the division stating that the applicant is  
590 currently engaged in the practice of structural engineering; and

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

593 (3) Each applicant for licensure as a professional land surveyor shall:

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

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

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

597 (d) (i) have graduated and received an associates, bachelors, or masters degree from a  
598 land surveying program, or an equivalent land surveying program, such as a program offered by  
599 the Utah College of Applied Technology as approved by the State Board of Regents,  
600 established by rule by the division in collaboration with the board, and have successfully  
601 completed a program of qualifying experience in land surveying established by rule by the  
602 division in collaboration with the board; or

603 (ii) have successfully completed a program of qualifying experience in land surveying  
604 prior to January 1, 2007, in accordance with rules established by the division in collaboration  
605 with the board;

606 (e) have successfully passed examinations established by rule by the division in  
607 collaboration with the board; and

608 (f) meet with the board or representative of the division upon request for the purpose of  
609 evaluating the applicant's qualification for licensure.

610 (4) Each applicant for licensure by endorsement shall:

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

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

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

614 (d) submit satisfactory evidence of:

615 (i) current licensure in good standing in a jurisdiction recognized by rule by the  
616 division in collaboration with the board;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

648 with the board; and

649 (j) meet with the board, if requested, to determine the applicant's qualifications for  
650 certification.

651 (2) An applicant for licensure as a licensed practical nurse shall:

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

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

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

655 (d) be in a condition of physical and mental health that will permit the applicant to  
656 practice safely as a licensed practical nurse;

657 (e) have completed an approved practical nursing education program or an equivalent  
658 as determined by the board;

659 (f) have passed the examinations as required by division rule made in collaboration  
660 with the board; and

661 (g) meet with the board, if requested, to determine the applicant's qualifications for  
662 licensure.

663 (3) An applicant for licensure as a registered nurse shall:

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

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

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

667 (d) be in a condition of physical and mental health that will allow the applicant to  
668 practice safely as a registered nurse;

669 (e) have completed an approved registered nursing education program;

670 (f) have passed the examinations as required by division rule made in collaboration  
671 with the board; and

672 (g) meet with the board, if requested, to determine the applicant's qualifications for  
673 licensure.

674 (4) Applicants for licensure as an advanced practice registered nurse shall:

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

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

677 (c) be in a condition of physical and mental health which will allow the applicant to  
678 practice safely as an advanced practice registered nurse;

- 679 (d) hold a current registered nurse license in good standing issued by the state or be  
680 qualified at the time for licensure as a registered nurse;
- 681 (e) (i) have earned a graduate degree in:
- 682 (A) an advanced practice registered nurse nursing education program; or
- 683 (B) a related area of specialized knowledge as determined appropriate by the division  
684 in collaboration with the board; or
- 685 (ii) have completed a nurse anesthesia program in accordance with Subsection  
686 (4)(f)(ii);
- 687 (f) have completed:
- 688 (i) course work in patient assessment, diagnosis and treatment, and  
689 pharmacotherapeutics from an education program approved by the division in collaboration  
690 with the board; or
- 691 (ii) a nurse anesthesia program which is approved by the Council on Accreditation of  
692 Nurse Anesthesia Educational Programs;
- 693 (g) have successfully completed clinical practice in psychiatric and mental health  
694 nursing, including psychotherapy as defined by division rule, after completion of ~~the~~ a  
695 doctorate or master's degree required for licensure, to practice within the psychiatric and mental  
696 health nursing specialty;
- 697 (h) have passed the examinations as required by division rule made in collaboration  
698 with the board;
- 699 (i) be currently certified by a program approved by the division in collaboration with  
700 the board and submit evidence satisfactory to the division of the certification; and
- 701 (j) meet with the board, if requested, to determine the applicant's qualifications for  
702 licensure.
- 703 (5) For each applicant for licensure or certification under this chapter:
- 704 (a) the applicant shall:
- 705 (i) submit fingerprint cards in a form acceptable to the division at the time the  
706 application is filed; and
- 707 (ii) consent to a fingerprint background check by the Utah Bureau of Criminal  
708 Identification and the Federal Bureau of Investigation regarding the application; and
- 709 (b) the division shall request the Department of Public Safety to complete a Federal

710 Bureau of Investigation criminal background check through the national criminal history  
711 system (NCIC) or any successor system.

712 (6) For purposes of conducting the criminal background checks required in Subsection  
713 (5), the division shall have direct access to criminal background information maintained  
714 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

715 (7) (a) (i) Any new nurse license or certification issued under this section shall be  
716 conditional, pending completion of the criminal background check.

717 (ii) If the criminal background check discloses the applicant has failed to accurately  
718 disclose a criminal history, the license or certification shall be immediately and automatically  
719 revoked.

720 (b) (i) Any person whose conditional license or certification has been revoked under  
721 Subsection (7)(a) shall be entitled to a postrevocation hearing to challenge the revocation.

722 (ii) The hearing shall be conducted in accordance with Title 63G, Chapter 4,  
723 Administrative Procedures Act.

724 (8) (a) If a person has been charged with a violent felony, as defined in Subsection  
725 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or  
726 nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the  
727 successful completion of probation:

728 (i) the person is disqualified for licensure under this chapter; and

729 (ii) (A) if the person is licensed under this chapter, the division:

730 (I) shall act upon the license as required under Section 58-1-401; and

731 (II) may not renew or subsequently issue a license to the person under this chapter; and

732 (B) if the person is not licensed under this chapter, the division may not issue a license  
733 to the person under this chapter.

734 (b) If a person has been charged with a felony other than a violent felony, as defined in  
735 Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of  
736 guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance  
737 pending the successful completion of probation:

738 (i) if the person is licensed under this chapter, the division shall determine whether the  
739 felony disqualifies the person for licensure under this chapter and act upon the license, as  
740 required, in accordance with Section 58-1-401; and



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

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

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

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

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

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

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

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

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

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

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

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

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

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

763 (iii) relaxing and lengthening muscles;

764 (iv) relieving pain;

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

766 (vi) achieving homeostasis; and

767 (vii) recreational or other purposes;

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

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

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

772 58-73-102;

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

775 (g) manual traction and stretching exercise;

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

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

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

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

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

783 (ii) the provisions of this chapter; and

784 (iii) division rule.

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

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

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

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

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

792 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

819 (c) a list of courses that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

865 (c) be of good moral character;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

907 (b) includes:

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

910 (ii) any other violation of this chapter.

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

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

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

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

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

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

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

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

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

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

936 and

937 (iii) any controlled substance;

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

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

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

945 (i) an audit of the website; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



947av **§→ the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2,**  
 947aw **Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the**  
 947ax **initial determination of a person's unemployment tax liability;**

947ay (j) **state agency action relating to the distribution or award of a monetary grant to or**  
 947az **between governmental units, or for research, development, or the arts, or judicial review of the**  
 947ba **action;**

947bb (k) **the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah**  
 947bc **Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,**  
 947bd **Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,**  
 947be **Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,**  
 947bf **Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7,**  
 947bg **Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act,**  
 947bh **except that this chapter governs an agency action commenced by a person authorized by law to**  
 947bi **contest the validity or correctness of the notice or order;**

947bj (l) **state agency action, to the extent required by federal statute or regulation, to be**  
 947bk **conducted according to federal procedures;**

947bl (m) **the initial determination of a person's eligibility for government or public**  
 947bm **assistance benefits;**

947bn (n) **state agency action relating to wildlife licenses, permits, tags, and certificates of**  
 947bo **registration;**

947bp (o) **a license for use of state recreational facilities;**

947bp1 (p) **state agency action under**  
 947bq **Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in**  
 947br **Section 63G-2-603;**

947bs (q) **state agency action relating to the collection of water commissioner fees and**  
 947bt **delinquency penalties, or judicial review of the action;**

947bu (r) **state agency action relating to the installation, maintenance, and repair of**  
 947bv **headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other**  
 947bw **water measuring devices, or judicial review of the action;**

947bx (s) **the issuance and enforcement of an initial order under Section 73-2-25;**

947by (t) (i) **a hearing conducted by the Division of Securities under Section 61-1-11.1; and**

947bz (ii) **an action taken by the Division of Securities pursuant to a hearing conducted under**  
 947ca **Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange**  
 947cb **of securities described in Subsection 61-1-11.1(1); and**

947cc (u) **state agency action relating to water well driller licenses, water well ←§**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

958 rules of the Judicial Council;

959 (b) to identify types of civil actions that qualify for ADR procedures;

960 (c) to refer to ADR procedures all or particular issues within a civil action;

961 (d) to protect persons not parties to the civil action whose rights may be affected in the  
962 resolution of the dispute;

963 (e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to  
964 participate in an optional ADR procedure;

965 (f) to exempt any case from the ADR program in which the objectives of ADR would  
966 not be realized;

967 (g) to create timetables to ensure that the ADR procedure is instituted and completed  
968 without undue delay or expense;

969 (h) to establish the qualifications of ADR providers for each form of ADR procedure  
970 including that~~[-(i) an ADR provider may, but need not be, a certified ADR provider pursuant~~  
971 ~~to Title 58, Chapter 39a, Alternative Dispute Resolution Providers Certification Act, and (ii)]~~  
972 formal education in any particular field may not, by itself, be either a prerequisite or sufficient  
973 qualification to serve as an ADR provider under the program authorized by this part;

974 (i) to govern the conduct of each type of ADR procedure, including the site at which  
975 the procedure is conducted;

976 (j) to establish the means for the selection of an ADR provider for each form of ADR  
977 procedure;

978 (k) to determine the powers, duties, and responsibilities of the ADR provider for each  
979 form of ADR procedure;

980 (l) to establish a code of ethics applicable to ADR providers with means for its  
981 enforcement;

982 (m) to protect and preserve the privacy and confidentiality of ADR procedures;

983 (n) to protect and preserve the privacy rights of the persons attending the ADR  
984 procedures;

985 (o) to permit waiver of all or part of fees assessed for referral of a case to the ADR  
986 program on a showing of impecuniosity or other compelling reason;

987 (p) to authorize imposition of sanctions for failure of counsel or parties to participate in  
988 good faith in the ADR procedure assigned;

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

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

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

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

996 This bill repeals:

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

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

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

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

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

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

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

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**Legislative Review Note**

as of 1-17-11 7:04 AM

**Office of Legislative Research and General Counsel**

# REVISED FISCAL NOTE

H.B. 243

SHORT TITLE: Occupations and Professions Amendments

SPONSOR: Morley, M.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this legislation will save the Department of Commerce \$2,600 per year beginning in FY 2013. The legislation will also result in the loss of a corresponding amount of revenue to the Commerce Service Fund.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
<b>Revenue:</b>			
Commerce Service Fund	\$0	\$0	(\$2,600)
Total Revenue	\$0	\$0	(\$2,600)
<b>Expenditure:</b>			
Commerce Service Fund	\$0	\$0	(\$2,600)
Total Expenditure	\$0	\$0	(\$2,600)
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	\$0
Net Impact, General/Education Funds	\$0	\$0	\$0

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

41 Alternative Dispute Resolution providers will no longer need to pay the \$63 renewal fee.