

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           ▶ clarifies licensure by endorsement provisions for professional engineers,  
21 professional structural engineers, and professional land surveyors;
- 22           ▶ modifies the qualifications for licensure as an advanced practice registered nurse;
- 23           ▶ modifies the definition of practice of massage therapy for purposes of the Massage  
24 Practice Therapy Act;
- 25           ▶ modifies continuing education requirement provisions for licensed elevator  
26 mechanics and elevator contract licensees;
- 27           ▶ makes technical changes to vocational rehabilitation counselor licensing provisions;
- 28           ▶ modifies the term of license provisions; and
- 29           ▶ makes certain technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 **AMENDS:**

- 36 **38-11-206**, as last amended by Laws of Utah 2009, Chapter 183
- 37 **58-1-201**, as last amended by Laws of Utah 2010, Chapters 286 and 324
- 38 **58-1-401**, as last amended by Laws of Utah 2010, Chapter 372
- 39 **58-1-404**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **58-1-502**, as enacted by Laws of Utah 1993, Chapter 297
- 41 **58-22-302**, as last amended by Laws of Utah 2009, Chapter 183
- 42 **58-31b-302**, as last amended by Laws of Utah 2009, Chapter 183
- 43 **58-47b-102**, as last amended by Laws of Utah 2006, Chapter 109
- 44 **58-55-302.7**, as enacted by Laws of Utah 2010, Chapter 57
- 45 **58-55-303**, as last amended by Laws of Utah 2010, Chapters 53, 57, and 227
- 46 **58-78-302**, as enacted by Laws of Utah 2009, Chapter 122
- 47 **58-78-303**, as enacted by Laws of Utah 2009, Chapter 122
- 48 **58-83-401**, as enacted by Laws of Utah 2010, Chapter 180
- 49 **63G-4-102**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 50 **78B-6-205**, as renumbered and amended by Laws of Utah 2008, Chapter 3

51 **ENACTS:**

52 **58-1-301.7**, Utah Code Annotated 1953

53 **REPEALS:**

- 54 **58-39a-1**, as enacted by Laws of Utah 1991, Chapter 279
- 55 **58-39a-2**, as last amended by Laws of Utah 1993, Chapter 297
- 56 **58-39a-3**, as last amended by Laws of Utah 1993, Chapter 297
- 57 **58-39a-4**, as enacted by Laws of Utah 1991, Chapter 279

58 **58-39a-5**, as last amended by Laws of Utah 2009, Chapter 183

59 **58-39a-5.5**, as last amended by Laws of Utah 1995, Chapter 12

60 **58-39a-6**, as last amended by Laws of Utah 1995, Chapter 12

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

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

64 **38-11-206. Limitations on fund balance -- Payment of special assessments.**

65 (1) (a) If on [~~December 31~~] June 30 of any year the balance in the fund is less than  
66 \$1,500,000, the division shall make a special assessment against all qualified beneficiaries in  
67 an amount that will restore the unencumbered fund balance to not less than \$2,000,000 or more  
68 than \$2,500,000.

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

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

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

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

77 **58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies --**  
78 **Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in**  
79 **professional school teaching continuing education prohibited.**

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

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

85 (b) Each board shall be composed of five members, four of whom shall be licensed or

86 certified practitioners in good standing of the occupation or profession the board represents,  
87 and one of whom shall be a member of the general public, unless otherwise provided under the  
88 specific licensing chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
121 63A-3-107.

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

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

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

128 **58-1-301.7. Change of information.**

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

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

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

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

138 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**  
139 **limitations -- Sanctions.**

140 (1) The division shall refuse to issue a license to an applicant and shall refuse to renew  
141 or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a

142 licensee who does not meet the qualifications for licensure under this title.

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

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

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

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

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

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

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

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

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

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

166 (5) The division may impose an administrative penalty in accordance with Section  
167 58-1-502.

168 [~~5~~] (6) (a) The division may not take disciplinary action against any person for  
169 unprofessional or unlawful conduct under this title, unless the division enters into a stipulated

170 agreement or initiates an adjudicative proceeding regarding the conduct within four years after  
171 the conduct is reported to the division, except under Subsection [~~(5)~~] (6)(b).

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

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

177 **58-1-404. Diversion -- Procedure.**

178 (1) As used in this section, "diversion" means suspending action to discipline a  
179 licensee who is or could be charged in a Notice of Agency Action with certain offenses within  
180 the category of unprofessional or unlawful conduct on the condition that the licensee agrees to  
181 participate in an educational or rehabilitation program or fulfill some other condition.

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

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

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

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

193 (iii) Committee members may not serve concurrently as members of the corresponding  
194 board.

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

196 (v) The director may:

197 (A) dissolve any diversion advisory committee;

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

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

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

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

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

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

210 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
211 the division shall define by rule the particular offenses within the category of unprofessional or  
212 unlawful conduct which may be subject to diversion.

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

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

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

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

222 (a) during the negotiations for diversion;

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

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

225 (6) (a) As used in this section, "diversion agreement" means a written agreement

226 between the division, through its director, and the licensee, which specifies formal terms and  
227 conditions the licensee must fulfill in order to comply with the diversion program.

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

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

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

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

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

241 (d) (i) The diversion agreement shall provide that if the licensee fails to comply with its  
242 terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the  
243 diversion agreement and issue an order of license suspension, which shall be stayed in favor of  
244 an order of probation having the same terms as those which comprised the diversion  
245 agreement.

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

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

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

251 (i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter  
252 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was  
253 premised;

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

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

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

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

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

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

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

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

272 (d) The division may consider the completion of a diversion program and the contents  
273 of the diversion agreement in determining the appropriate disciplinary action if the licensee is  
274 charged in the future with the same or similar conduct.

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

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

280 (b) Acceptance of the licensee into diversion does not preclude the division from  
281 taking disciplinary action or continuing to take disciplinary action against the licensee for

282 unlawful or unprofessional conduct committed before, during, or after participation in the  
283 diversion program, except for that conduct which formed the basis for the diversion agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

335 (14) (a) If, during the course of the diversion agreement, information is brought to the  
336 attention of the director that the licensee has violated the diversion agreement and if it appears  
337 in the best interest of the public to proceed with charges, the director, after consultation with

338 the diversion advisory committee, shall cause to be served upon the licensee an order to show  
339 cause specifying the facts relied upon by the director and setting a time and place for hearing to  
340 determine whether or not the licensee has violated the diversion agreement and whether the  
341 agreement should be terminated.

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

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

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

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

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

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

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

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

366 (iii) The period of probation is tolled during any time in which the licensee does not  
367 have an active license in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

409 Section 6. Section **58-1-502** is amended to read:

410 **58-1-502. Unlawful conduct -- Penalties.**

411 (1) Unless otherwise specified in this title, ~~any~~ a person who violates the unlawful  
412 conduct provisions defined in this title is guilty of a class A misdemeanor.

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

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

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

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

421 (b) (i) The division may assess a fine under this Subsection (2) against a person who

422 violates Subsection 58-1-501(1)(a) or (c) or any rule or order issued with respect to those  
423 subsections as evidenced by:

- 424 (A) an uncontested citation;
- 425 (B) a stipulated settlement; or
- 426 (C) a finding of a violation in an adjudicative proceeding.

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

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

432 (d) A citation shall:

- 433 (i) be in writing;
- 434 (ii) describe with particularity the nature of the violation, including a reference to the  
435 provision of the chapter, rule, or order alleged to have been violated;
- 436 (iii) clearly state that the recipient must notify the division in writing within 20  
437 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing  
438 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 439 (iv) clearly explain the consequences of failure to timely contest the citation or to make  
440 payment of any fine assessed by the citation within the time specified in the citation.

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

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

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

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

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

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

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

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

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

455 and

456 (iii) for any subsequent offense handled pursuant to Subsection (2)(a), a fine of up to  
457 \$2,000 for each day of continued offense.

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

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

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

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

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

468 (b) Any county attorney or the attorney general of the state shall provide legal  
469 assistance and advice to the director in an action to collect the penalty.

470 (c) A court may award reasonable attorney fees and costs to the division in an action  
471 brought by the division to enforce the provisions of this section.

472 Section 7. Section **58-22-302** is amended to read:

473 **58-22-302. Qualifications for licensure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

505 (g) meet with the board or representative of the division upon request for the purpose

506 of evaluating the applicant's qualification for licensure.

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

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

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

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

511 (d) (i) have graduated and received an associates, bachelors, or masters degree from a  
512 land surveying program, or an equivalent land surveying program, such as a program offered by  
513 the Utah College of Applied Technology as approved by the State Board of Regents,  
514 established by rule by the division in collaboration with the board, and have successfully  
515 completed a program of qualifying experience in land surveying established by rule by the  
516 division in collaboration with the board; or

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

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

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

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

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

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

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

528 (d) submit satisfactory evidence of:

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

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

533 (iii) full-time employment as a principal for at least five of the last seven years

534 immediately preceding the date of the application as a:

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

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

537 (C) licensed professional land surveyor [as a principal for at least five of the last seven

538 years immediately preceding the date of the application] for licensure as a professional land

539 surveyor; and

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

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

544 Section 8. Section **58-31b-302** is amended to read:

545 **58-31b-302. Qualifications for licensure or certification -- Criminal background**  
546 **checks.**

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

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

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

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

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

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

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

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

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

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

562 with the board; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 590 (b) pay to the division a fee determined under Section 63J-1-504;
- 591 (c) be in a condition of physical and mental health which will allow the applicant to  
592 practice safely as an advanced practice registered nurse;
- 593 (d) hold a current registered nurse license in good standing issued by the state or be  
594 qualified at the time for licensure as a registered nurse;
- 595 (e) (i) have earned a graduate degree in:
- 596 (A) an advanced practice registered nurse nursing education program; or  
597 (B) a related area of specialized knowledge as determined appropriate by the division  
598 in collaboration with the board; or
- 599 (ii) have completed a nurse anesthesia program in accordance with Subsection  
600 (4)(f)(ii);
- 601 (f) have completed:
- 602 (i) course work in patient assessment, diagnosis and treatment, and  
603 pharmacotherapeutics from an education program approved by the division in collaboration  
604 with the board; or
- 605 (ii) a nurse anesthesia program which is approved by the Council on Accreditation of  
606 Nurse Anesthesia Educational Programs;
- 607 (g) have successfully completed clinical practice in psychiatric and mental health  
608 nursing, including psychotherapy as defined by division rule, after completion of ~~the~~ a  
609 doctorate or master's degree required for licensure, to practice within the psychiatric and mental  
610 health nursing specialty;
- 611 (h) have passed the examinations as required by division rule made in collaboration  
612 with the board;
- 613 (i) be currently certified by a program approved by the division in collaboration with  
614 the board and submit evidence satisfactory to the division of the certification; and
- 615 (j) meet with the board, if requested, to determine the applicant's qualifications for  
616 licensure.
- 617 (5) For each applicant for licensure or certification under this chapter:

618 (a) the applicant shall:

619 (i) submit fingerprint cards in a form acceptable to the division at the time the

620 application is filed; and

621 (ii) consent to a fingerprint background check by the Utah Bureau of Criminal

622 Identification and the Federal Bureau of Investigation regarding the application; and

623 (b) the division shall request the Department of Public Safety to complete a Federal

624 Bureau of Investigation criminal background check through the national criminal history

625 system (NCIC) or any successor system.

626 (6) For purposes of conducting the criminal background checks required in Subsection

627 (5), the division shall have direct access to criminal background information maintained

628 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

629 (7) (a) (i) Any new nurse license or certification issued under this section shall be

630 conditional, pending completion of the criminal background check.

631 (ii) If the criminal background check discloses the applicant has failed to accurately

632 disclose a criminal history, the license or certification shall be immediately and automatically

633 revoked.

634 (b) (i) Any person whose conditional license or certification has been revoked under

635 Subsection (7)(a) shall be entitled to a postrevocation hearing to challenge the revocation.

636 (ii) The hearing shall be conducted in accordance with Title 63G, Chapter 4,

637 Administrative Procedures Act.

638 (8) (a) If a person has been charged with a violent felony, as defined in Subsection

639 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or

640 nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the

641 successful completion of probation:

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

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

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

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

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

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

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

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

658 Section 9. Section **58-47b-102** is amended to read:

659 **58-47b-102. Definitions.**

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

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

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

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

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

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

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

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

673 (b) the systematic manual or mechanical manipulation of the soft tissue of the body for

674 the [therapeutic] purpose of:

- 675 (i) promoting the health and well-being of a client;
- 676 (ii) enhancing the circulation of the blood and lymph;
- 677 (iii) relaxing and lengthening muscles;
- 678 (iv) relieving pain;
- 679 (v) restoring metabolic balance; ~~and~~
- 680 (vi) achieving homeostasis; and
- 681 (vii) recreational or other purposes;
- 682 (c) the use of the hands or a mechanical or electrical apparatus in connection with this

683 Subsection (6);

- 684 (d) the use of rehabilitative procedures involving the soft tissue of the body;
- 685 (e) range of motion or movements without spinal adjustment as set forth in Section
- 686 58-73-102;
- 687 (f) oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and
- 688 cabinet baths;
- 689 (g) manual traction and stretching exercise;
- 690 (h) correction of muscular distortion by treatment of the soft tissues of the body;
- 691 (i) counseling, education, and other advisory services to reduce the incidence and
- 692 severity of physical disability, movement dysfunction, and pain;
- 693 (j) similar or related activities and modality techniques; and
- 694 (k) the practice described in this Subsection (6) on an animal to the extent permitted

695 by:

- 696 (i) Subsection 58-28-307(12);
- 697 (ii) the provisions of this chapter; and
- 698 (iii) division rule.
- 699 (7) "Soft tissue" means the muscles and related connective tissue.
- 700 (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.
- 701 (9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and as

702 may be further defined by division rule.

703 Section 10. Section **58-55-302.7** is amended to read:

704 **58-55-302.7. Continuing education requirements for electricians, elevator**  
705 **mechanics, and plumbers.**

706 (1) As used in this section:

707 (a) "Licensed electrician" means an individual licensed under this chapter as an  
708 apprentice electrician, journeyman electrician, master electrician, residential journeyman  
709 electrician, or residential master electrician.

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

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

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

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

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

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

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

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

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

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

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

729 (a) an online application for a continuing education course provider to apply to the

730 division for approval of the course for inclusion in the continuing education program;  
731 (b) a list of courses that the division has approved for inclusion in the continuing  
732 education program; and  
733 (c) a list of courses that:  
734 (i) a licensed electrician, licensed elevator mechanic, or licensed plumber has  
735 completed under the continuing education program; and  
736 (ii) the licensed electrician, licensed elevator mechanic, or licensed plumber may  
737 access to monitor compliance with the continuing education requirement under Subsection (2).  
738 (5) The division may charge a fee, established by the division under Section 63J-1-504,  
739 to administer the requirements of this section.

740 Section 11. Section **58-55-303** is amended to read:

741 **58-55-303. Term of license -- Expiration -- Renewal.**

742 (1) (a) Each license issued under this chapter shall be issued in accordance with a  
743 two-year renewal cycle established by rule.  
744 (b) The division may by rule extend or shorten a renewal period by as much as one year  
745 to stagger the renewal cycle it administers.  
746 (2) At the time of renewal, the licensee shall show satisfactory evidence of:  
747 (a) continuing financial responsibility as required under Section 58-55-306;  
748 (b) for a contractor licensee, completion of six hours of approved continuing education,  
749 as required in Section 58-55-302.5; and  
750 (c) if the licensee is an apprentice electrician or plumber, journeyman electrician or  
751 plumber, master electrician or plumber, residential journeyman electrician or plumber, or  
752 residential master electrician or plumber, completion of the number of hours of continuing  
753 education specified under Section 58-55-302.7.  
754 (3) Each license automatically expires on the expiration date shown on the license  
755 unless the licensee renews the license in accordance with Section 58-1-308.  
756 (4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking  
757 to renew or reinstate a license.

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

- 760 (a) shall pay in full all fines imposed by the division;
- 761 (b) resolve any outstanding citations or disciplinary actions with the division;
- 762 (c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution;
- 763 (d) complete a new financial responsibility review as required under Section  
764 58-55-306, using only titled assets; and
- 765 (e) pay in full any reimbursement amount as provided in Title 38, Chapter 11,  
766 Residence Lien Restriction and Lien Recovery Fund Act.

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

772 Section 12. Section **58-78-302** is amended to read:

773 **58-78-302. Qualifications for licensure -- Licensure by credential.**

- 774 (1) Except as provided in Subsection [~~(4)~~] (2), an applicant for licensure as a  
775 vocational rehabilitation counselor under this chapter shall:
  - 776 (a) submit an application in a form as prescribed by the division;
  - 777 (b) pay a fee determined by the department under Section 63J-1-504 to recover the  
778 costs of administering licensing requirements relating to vocational rehabilitation counselors;
  - 779 (c) be of good moral character;
  - 780 (d) provide satisfactory evidence of having earned a master's degree in rehabilitation  
781 counseling or a related field;
  - 782 (e) provide satisfactory evidence of having 4,000 hours of disability related work  
783 experience under the supervision of a licensed vocational rehabilitation counselor, except as  
784 otherwise provided in Subsection (2); and
  - 785 (f) [~~after January 1, 2011,~~] meet the examination requirement established by rule by the

786 division in collaboration with the board.

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

790 ~~[(3) An applicant may satisfy the requirement of Subsection (1)(d) if, prior to January~~  
791 ~~1, 2011, the applicant provides satisfactory evidence of:]~~

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

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

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

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

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

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

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

800 ~~[(4)]~~ (2) The division may issue a license under this chapter to an individual who is  
801 licensed in another state or jurisdiction to practice vocational rehabilitation counseling if the  
802 division finds that the other state or jurisdiction has substantially the same or higher licensure  
803 requirements as this state.

804 Section 13. Section **58-78-303** is amended to read:

805 **58-78-303. Term of license -- Expiration -- Renewal.**

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

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

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

813 Section 14. Section **58-83-401** is amended to read:

814 **58-83-401. Grounds for denial of license -- Disciplinary proceedings --**  
815 **Termination of authority to prescribe -- Immediate and significant danger.**

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

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

821 (b) includes:

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

824 (ii) any other violation of this chapter.

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

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

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

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

839 (b) It is not a defense to an alleged violation under this chapter that the alleged  
840 violation was a result of an action or inaction not by the charged party but by the related online  
841 prescriber, the online contract pharmacy, or the Internet facilitator.

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

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

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

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

850 and

851 (iii) any controlled substance;

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

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

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

859 (i) an audit of the website; or

860 (ii) records of the online prescriber, the Internet facilitator, or the online contract  
861 pharmacy.

862 Section 15. Section **63G-4-102** is amended to read:

863 **63G-4-102. Scope and applicability of chapter.**

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

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

870 (b) judicial review of the action.

871 (2) This chapter does not govern:

872 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

873 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to

874 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the

875 issuance of a tax assessment, except that this chapter governs an agency action commenced by

876 a taxpayer or by another person authorized by law to contest the validity or correctness of the

877 action;

878 (c) state agency action relating to extradition, to the granting of a pardon or parole, a

879 commutation or termination of a sentence, or to the rescission, termination, or revocation of

880 parole or probation, to the discipline of, resolution of a grievance of, supervision of,

881 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah

882 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction

883 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or

884 judicial review of the action;

885 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a

886 student or teacher in a school or educational institution, or judicial review of the action;

887 (e) an application for employment and internal personnel action within an agency

888 concerning its own employees, or judicial review of the action;

889 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah

890 Occupational Safety and Health Act, and Title 58, [~~Chapter 3a, Architects Licensing Act,~~

891 ~~Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing~~

892 ~~Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional~~

893 ~~Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55,~~

894 ~~Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and~~

895 ~~Chapter 76, Professional Geologist Licensing Act]~~ Occupations and Professions, except that

896 this chapter governs an agency action commenced by the employer, licensee, or other person

897 authorized by law to contest the validity or correctness of the citation or assessment;

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

902 (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of  
903 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution  
904 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or  
905 Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or  
906 judicial review of the action;

907 (i) the initial determination of a person's eligibility for unemployment benefits, the  
908 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'  
909 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial  
910 determination of a person's unemployment tax liability;

911 (j) state agency action relating to the distribution or award of a monetary grant to or  
912 between governmental units, or for research, development, or the arts, or judicial review of the  
913 action;

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

922 (l) state agency action, to the extent required by federal statute or regulation, to be  
923 conducted according to federal procedures;

924 (m) the initial determination of a person's eligibility for government or public  
925 assistance benefits;

926 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of  
927 registration;

928 (o) a license for use of state recreational facilities;

929 (p) state agency action under Title 63G, Chapter 2, Government Records Access and  
930 Management Act, except as provided in Section 63G-2-603;

931 (q) state agency action relating to the collection of water commissioner fees and  
932 delinquency penalties, or judicial review of the action;

933 (r) state agency action relating to the installation, maintenance, and repair of headgates,  
934 caps, valves, or other water controlling works and weirs, flumes, meters, or other water  
935 measuring devices, or judicial review of the action;

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

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

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

941 (u) state agency action relating to water well driller licenses, water well drilling  
942 permits, water well driller registration, or water well drilling construction standards, or judicial  
943 review of the action.

944 (3) This chapter does not affect a legal remedy otherwise available to:

945 (a) compel an agency to take action; or

946 (b) challenge an agency's rule.

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

949 (a) requesting or ordering a conference with parties and interested persons to:

950 (i) encourage settlement;

951 (ii) clarify the issues;

952 (iii) simplify the evidence;

953 (iv) facilitate discovery; or

954 (v) expedite the proceeding; or  
955 (b) granting a timely motion to dismiss or for summary judgment if the requirements of  
956 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,  
957 except to the extent that the requirements of those rules are modified by this chapter.

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

960 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is  
961 governed by this chapter.

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

966 (7) (a) If the attorney general issues a written determination that a provision of this  
967 chapter would result in the denial of funds or services to an agency of the state from the federal  
968 government, the applicability of the provision to that agency shall be suspended to the extent  
969 necessary to prevent the denial.

970 (b) The attorney general shall report the suspension to the Legislature at its next  
971 session.

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

974 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good  
975 cause shown, from lengthening or shortening a time period prescribed in this chapter, except  
976 the time period established for judicial review.

977 Section 16. Section **78B-6-205** is amended to read:

978 **78B-6-205. Judicial Council rules for ADR procedures.**

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

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

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

986           (a) to orient parties and their counsel to the ADR program, ADR procedures, and the  
987 rules of the Judicial Council;

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

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

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

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

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

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

998           (h) to establish the qualifications of ADR providers for each form of ADR procedure  
999 including that~~[-(i) an ADR provider may, but need not be, a certified ADR provider pursuant~~  
1000 ~~to Title 58, Chapter 39a, Alternative Dispute Resolution Providers Certification Act; and (ii)]~~  
1001 formal education in any particular field may not, by itself, be either a prerequisite or sufficient  
1002 qualification to serve as an ADR provider under the program authorized by this part;

1003           (i) to govern the conduct of each type of ADR procedure, including the site at which  
1004 the procedure is conducted;

1005           (j) to establish the means for the selection of an ADR provider for each form of ADR  
1006 procedure;

1007           (k) to determine the powers, duties, and responsibilities of the ADR provider for each  
1008 form of ADR procedure;

1009           (l) to establish a code of ethics applicable to ADR providers with means for its

- 1010 enforcement;
- 1011 (m) to protect and preserve the privacy and confidentiality of ADR procedures;
- 1012 (n) to protect and preserve the privacy rights of the persons attending the ADR
- 1013 procedures;
- 1014 (o) to permit waiver of all or part of fees assessed for referral of a case to the ADR
- 1015 program on a showing of impecuniosity or other compelling reason;
- 1016 (p) to authorize imposition of sanctions for failure of counsel or parties to participate in
- 1017 good faith in the ADR procedure assigned;
- 1018 (q) to assess the fees to cover the cost of compensation for the services of the ADR
- 1019 provider and reimbursement for the provider's allowable, out-of-pocket expenses and
- 1020 disbursements; and
- 1021 (r) to allow vacation of an award by a court as provided in Section 78B-11-124.
- 1022 (4) The Judicial Council may, from time to time, limit the application of its ADR rules
- 1023 to particular judicial districts.

1024 **Section 17. Repealer.**

1025 This bill repeals:

1026 Section **58-39a-1, Short title.**

1027 Section **58-39a-2, Definitions.**

1028 Section **58-39a-3, Board -- Composition -- Duties.**

1029 Section **58-39a-4, Certification and recognition of certification by other states.**

1030 Section **58-39a-5, Qualifications for certification.**

1031 Section **58-39a-5.5, Term of certificate -- Expiration -- Renewal.**

1032 Section **58-39a-6, Grounds for denial of certificate -- Disciplinary proceedings.**