

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

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 ▶ modifies unprofessional conduct provisions and unlawful conduct penalty
21 provisions;

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



- 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 **58-1-501**, as last amended by Laws of Utah 2010, Chapter 180
- 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
- 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

63

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 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 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

493 prescription; or

494 [~~m~~] (o) violating a provision of Section 58-1-501.5.

495 Section 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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.

948 Section 16. 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 17. **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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