

Senator John L. Valentine proposes the following substitute bill:

GENERAL REPEALER

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill modifies the Utah Code by repealing provisions that have been found unconstitutional or are no longer in use.

Highlighted Provisions:

This bill:

- ▶ repeals provisions of Utah Code that have been found unconstitutional relating to:
 - a prohibition on legal voters of any county, city, or town initiating a budget, budget change, or land use ordinance, or requiring a budget or land use ordinance adopted by a local legislative body to the voters;
 - a legal presumption of malice in criminal libel cases; and
 - a prohibition on the distribution of pornographic materials through cable televisions;
- ▶ repeals provisions of Utah Code that are not in use relating to:
 - the use of certified local inspectors by the Office of Licensing;
 - the applicability of the Defined Contribution Risk Adjuster Act to an insurance carrier that offers a defined contribution arrangement health benefit plan; and
 - certain rulemaking authority of the Department of Workforce Services that went into effect in July 1998; and



26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **61-2g-301**, as renumbered and amended by Laws of Utah 2011, Chapter 289

34 **62A-2-101**, as last amended by Laws of Utah 2011, Chapter 366

35 **63G-3-305**, as renumbered and amended by Laws of Utah 2008, Chapter 382

36 **78B-3-404**, as renumbered and amended by Laws of Utah 2008, Chapter 3

37 REPEALS:

38 **20A-7-401**, as last amended by Laws of Utah 2008, Chapter 24

39 **61-2g-303**, as enacted by Laws of Utah 2011, Chapter 289

40 **62A-2-108.3**, as last amended by Laws of Utah 2008, Chapter 382

41 **76-9-503**, as enacted by Laws of Utah 1973, Chapter 196

42 **76-10-1229**, as enacted by Laws of Utah 1981, Chapter 97



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

45 Section 1. Section **61-2g-301** is amended to read:

46 **61-2g-301. License or certification required.**

47 (1) Except as provided in Subsection (2) [~~and in Section 61-2g-303~~], it is unlawful for
48 a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified
49 appraisal report, or perform a consultation service relating to real estate or real property in this
50 state without first being licensed or certified in accordance with this chapter.

51 (2) This section does not apply to:

52 (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102
53 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives
54 an opinion:

55 (i) regarding the value of real estate;

56 (ii) to a potential seller or third-party recommending a listing price of real estate; or

57 (iii) to a potential buyer or third-party recommending a purchase price of real estate;

58 (b) an employee of a company who states an opinion of value or prepares a report
59 containing value conclusions relating to real estate or real property solely for the company's
60 use;

61 (c) an official or employee of a government agency while acting solely within the scope
62 of the official's or employee's duties, unless otherwise required by Utah law;

63 (d) an auditor or accountant who states an opinion of value or prepares a report
64 containing value conclusions relating to real estate or real property while performing an audit;

65 (e) an individual, except an individual who is required to be licensed or certified under
66 this chapter, who states an opinion about the value of property in which the person has an
67 ownership interest;

68 (f) an individual who states an opinion of value if no consideration is paid or agreed to
69 be paid for the opinion and no other party is reasonably expected to rely on the individual's
70 appraisal expertise;

71 (g) an individual, such as a researcher or a secretary, who does not render significant
72 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
73 opinion, or conclusion; or

74 (h) an attorney authorized to practice law in this state who, in the course of the
75 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion
76 of the value of real estate.

77 (3) An opinion of value or report containing value conclusions exempt under
78 Subsection (2) may not be referred to as an appraisal.

79 (4) Except as provided in Subsection (2) [~~and Section 61-2g-303~~], to prepare or cause
80 to be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an
81 individual shall:

82 (a) apply in writing for licensure or certification as provided in this chapter in the form
83 as the division may prescribe; and

84 (b) become licensed or certified under this chapter.

85 Section 2. Section **62A-2-101** is amended to read:

86 **62A-2-101. Definitions.**

87 As used in this chapter:

- 88 (1) "Adult day care" means nonresidential care and supervision:
89 (a) for three or more adults for at least four but less than 24 hours a day; and
90 (b) that meets the needs of functionally impaired adults through a comprehensive
91 program that provides a variety of health, social, recreational, and related support services in a
92 protective setting.
- 93 (2) (a) "Boarding school" means a private school that:
94 (i) uses a regionally accredited education program;
95 (ii) provides a residence to the school's students:
96 (A) for the purpose of enabling the school's students to attend classes at the school; and
97 (B) as an ancillary service to educating the students at the school;
98 (iii) has the primary purpose of providing the school's students with an education, as
99 defined in Subsection (2)(b)(i); and
100 (iv) (A) does not provide the treatment or services described in Subsection (26)(a); or
101 (B) provides the treatment or services described in Subsection (26)(a) on a limited
102 basis, as described in Subsection (2)(b)(ii).
- 103 (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for
104 one or more of grades kindergarten through 12th grade.
105 (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or
106 services described in Subsection (26)(a) on a limited basis if:
107 (A) the treatment or services described in Subsection (26)(a) are provided only as an
108 incidental service to a student; and
109 (B) the school does not:
110 (I) specifically solicit a student for the purpose of providing the treatment or services
111 described in Subsection (26)(a); or
112 (II) have a primary purpose of providing the services described in Subsection (26)(a).
- 113 (c) "Boarding school" does not include a therapeutic school.
- 114 [~~(3) "Certified local inspector" means a person certified by the office, pursuant to~~
115 ~~Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).]~~
- 116 [~~(4) "Certified local inspector applicant" means a person for which designation as a~~
117 ~~certified local inspector is sought under Section 62A-2-108.3.]~~
- 118 [~~(5)~~ (3) "Child" means a person under 18 years of age.

119 ~~[(6)]~~ (4) "Child placing" means receiving, accepting, or providing custody or care for
120 any child, temporarily or permanently, for the purpose of:

- 121 (a) finding a person to adopt the child;
- 122 (b) placing the child in a home for adoption; or
- 123 (c) foster home placement.

124 ~~[(7)]~~ (5) "Client" means an individual who receives or has received services from a
125 licensee.

126 ~~[(8)]~~ (6) "Day treatment" means specialized treatment that is provided to:

- 127 (a) a client less than 24 hours a day; and
 - 128 (b) four or more persons who:
 - 129 (i) are unrelated to the owner or provider; and
 - 130 (ii) have emotional, psychological, developmental, physical, or behavioral
- 131 dysfunctions, impairments, or chemical dependencies.

132 ~~[(9)]~~ (7) "Department" means the Department of Human Services.

133 ~~[(10)]~~ (8) "Direct access" means that an individual has, or likely will have, contact with
134 or access to a child or vulnerable adult that provides the individual with an opportunity for
135 personal communication or touch.

136 ~~[(11)]~~ (9) "Director" means the director of the Office of Licensing.

137 ~~[(12)]~~ (10) "Domestic violence" is as defined in Section 77-36-1.

138 ~~[(13)]~~ (11) "Domestic violence treatment program" means a nonresidential program
139 designed to provide psychological treatment and educational services to perpetrators and
140 victims of domestic violence.

141 ~~[(14)]~~ (12) "Elder adult" means a person 65 years of age or older.

142 ~~[(15)]~~ (13) "Executive director" means the executive director of the department.

143 ~~[(16)]~~ (14) "Foster home" means a temporary residential living environment for the
144 care of:

- 145 (a) fewer than four foster children in the home of a licensed or certified foster parent;
- 146 or
- 147 (b) four or more children in the home of a licensed or certified foster parent if the
- 148 children are siblings.

149 ~~[(17)]~~ (15) (a) "Human services program" means a:

- 150 (i) foster home;
- 151 (ii) therapeutic school;
- 152 (iii) youth program;
- 153 (iv) resource family home; or
- 154 (v) facility or program that provides:
 - 155 (A) secure treatment;
 - 156 (B) inpatient treatment;
 - 157 (C) residential treatment;
 - 158 (D) residential support;
 - 159 (E) adult day care;
 - 160 (F) day treatment;
 - 161 (G) outpatient treatment;
 - 162 (H) domestic violence treatment;
 - 163 (I) child placing services;
 - 164 (J) social detoxification; or
 - 165 (K) any other human services that are required by contract with the department to be
 - 166 licensed with the department.

167 (b) "Human services program" does not include a boarding school.

168 [~~18~~] (16) "Licensee" means a person or human services program licensed by the
169 office.

170 [~~19~~] (17) "Local government" means a:

- 171 (a) city; or
- 172 (b) county.

173 [~~20~~] (18) "Minor" has the same meaning as "child."

174 [~~21~~] (19) "Office" means the Office of Licensing within the Department of Human
175 Services.

176 [~~22~~] (20) "Outpatient treatment" means individual, family, or group therapy or
177 counseling designed to improve and enhance social or psychological functioning for those
178 whose physical and emotional status allows them to continue functioning in their usual living
179 environment.

180 [~~23~~] (21) (a) "Person associated with the licensee" means a person:

181 (i) affiliated with a licensee as an owner, director, member of the governing body,
182 employee, agent, provider of care, or volunteer; or

183 (ii) applying to become affiliated with a licensee in any capacity listed under
184 Subsection [~~(23)~~] (21)(a)(i).

185 (b) Notwithstanding Subsection [~~(23)~~] (21)(a), "person associated with the licensee"
186 does not include an individual serving on the following bodies unless that individual has direct
187 access to children or vulnerable adults:

188 (i) a local mental health authority under Section 17-43-301;

189 (ii) a local substance abuse authority under Section 17-43-201; or

190 (iii) a board of an organization operating under a contract to provide:

191 (A) mental health or substance abuse programs; or

192 (B) services for the local mental health authority or substance abuse authority.

193 (c) "Person associated with the licensee" does not include a guest or visitor whose
194 access to children or vulnerable adults is directly supervised by the licensee at all times.

195 [~~(24)~~] (22) "Regular business hours" means:

196 (a) the hours during which services of any kind are provided to a client; or

197 (b) the hours during which a client is present at the facility of a licensee.

198 [~~(25)~~] (23) (a) "Residential support" means arranging for or providing the necessities of
199 life as a protective service to individuals or families who have a disability or who are
200 experiencing a dislocation or emergency that prevents them from providing these services for
201 themselves or their families.

202 (b) "Residential support" includes providing a supervised living environment for
203 persons with:

204 (i) dysfunctions or impairments that are:

205 (A) emotional;

206 (B) psychological;

207 (C) developmental; or

208 (D) behavioral; or

209 (ii) chemical dependencies.

210 (c) Treatment is not a necessary component of residential support.

211 (d) "Residential support" does not include residential services that are performed:

212 (i) exclusively under contract with the Division of Services for People with
213 Disabilities; and

214 (ii) in a facility that serves less than four individuals.

215 [~~26~~] (24) (a) "Residential treatment" means a 24-hour group living environment for
216 four or more individuals unrelated to the owner or provider that offers room or board and
217 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
218 habilitation services for persons with emotional, psychological, developmental, or behavioral
219 dysfunctions, impairments, or chemical dependencies.

220 (b) "Residential treatment" does not include a:

221 (i) boarding school; or

222 (ii) foster home.

223 [~~27~~] (25) "Residential treatment program" means a human services program that
224 provides:

225 (a) residential treatment; or

226 (b) secure treatment.

227 [~~28~~] (26) (a) "Secure treatment" means 24-hour specialized residential treatment or
228 care for persons whose current functioning is such that they cannot live independently or in a
229 less restrictive environment.

230 (b) "Secure treatment" differs from residential treatment to the extent that it requires
231 intensive supervision, locked doors, and other security measures that are imposed on residents
232 with neither their consent nor control.

233 [~~29~~] (27) "Social detoxification" means short-term residential services for persons
234 who are experiencing or have recently experienced drug or alcohol intoxication, that are
235 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
236 Facility Licensing and Inspection Act, and that include:

237 (a) room and board for persons who are unrelated to the owner or manager of the
238 facility;

239 (b) specialized rehabilitation to acquire sobriety; and

240 (c) aftercare services.

241 [~~30~~] (28) "Substance abuse treatment program" means a program:

242 (a) designed to provide:

- 243 (i) specialized drug or alcohol treatment;
- 244 (ii) rehabilitation; or
- 245 (iii) habilitation services; and

246 (b) that provides the treatment or services described in Subsection [~~(30)~~] (28)(a) to
247 persons with:

- 248 (i) a diagnosed substance abuse disorder; or
- 249 (ii) chemical dependency disorder.

250 [~~(31)~~] (29) "Therapeutic school" means a residential group living facility:

251 (a) for four or more individuals that are not related to:

- 252 (i) the owner of the facility; or
- 253 (ii) the primary service provider of the facility;

254 (b) that serves students who have a history of failing to function:

- 255 (i) at home;
- 256 (ii) in a public school; or
- 257 (iii) in a nonresidential private school; and

258 (c) that offers:

- 259 (i) room and board; and
- 260 (ii) an academic education integrated with:
 - 261 (A) specialized structure and supervision; or
 - 262 (B) services or treatment related to:
 - 263 (I) a disability;
 - 264 (II) emotional development;
 - 265 (III) behavioral development;
 - 266 (IV) familial development; or
 - 267 (V) social development.

268 [~~(32)~~] (30) "Unrelated persons" means persons other than parents, legal guardians,
269 grandparents, brothers, sisters, uncles, or aunts.

270 [~~(33)~~] (31) "Vulnerable adult" means an elder adult or an adult who has a temporary or
271 permanent mental or physical impairment that substantially affects the person's ability to:

- 272 (a) provide personal protection;
- 273 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

- 274 (c) obtain services necessary for health, safety, or welfare;
- 275 (d) carry out the activities of daily living;
- 276 (e) manage the adult's own resources; or
- 277 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 278 neglect, or exploitation.

279 [~~34~~] (32) (a) "Youth program" means a nonresidential program designed to provide
280 behavioral, substance abuse, or mental health services to minors that:

- 281 (i) serves adjudicated or nonadjudicated youth;
- 282 (ii) charges a fee for its services;
- 283 (iii) may or may not provide host homes or other arrangements for overnight
284 accommodation of the youth;
- 285 (iv) may or may not provide all or part of its services in the outdoors;
- 286 (v) may or may not limit or censor access to parents or guardians; and
- 287 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
288 minor's own free will.

289 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
290 Scouts, 4-H, and other such organizations.

291 Section 3. Section **63G-3-305** is amended to read:

292 **63G-3-305. Agency review of rules -- Schedule of filings -- Limited exemption for**
293 **certain rules.**

294 (1) Each agency shall review each of its rules within five years of the rule's original
295 effective date or within five years of the filing of the last five-year review, whichever is later.
296 Rules effective prior to 1992 need not be reviewed until 1997.

297 (2) An agency may consider any substantial review of a rule to be a five-year review.
298 If the agency chooses to consider a review a five-year review, it shall follow the procedures
299 outlined in Subsection (3).

300 (3) At the conclusion of its review, the agency shall file a notice of review on or before
301 the anniversary date indicating its intent to continue, amend, or repeal the rule.

302 (a) If the agency continues the rule, it shall file a statement which includes:

- 303 (i) a concise explanation of the particular statutory provisions under which the rule is
304 enacted and how these provisions authorize or require the rule;

305 (ii) a summary of written comments received during and since the last five-year review
306 of the rule from interested persons supporting or opposing the rule; and

307 (iii) a reasoned justification for continuation of the rule, including reasons why the
308 agency disagrees with comments in opposition to the rule, if any.

309 (b) If the agency repeals the rule, it shall comply with Section 63G-3-301.

310 (c) If the agency amends and continues the rule, it shall comply with the requirements
311 of Section 63G-3-301 and file the statement required in Subsection (3)(a).

312 (4) (a) The division shall publish the notice and statement in the bulletin.

313 (b) The division may schedule the publication of agency notices and statements,
314 provided that no notice and statement shall be published more than one year after the review
315 deadline established under Subsection (1).

316 (5) The division shall notify an agency of rules due for review at least 180 days prior to
317 the anniversary date.

318 (6) If an agency finds that it will not meet the deadline established in Subsection (1):

319 (a) the agency may file an extension prior to the anniversary date with the division
320 indicating the reason for the extension; and

321 (b) the division shall publish notice of the extension in the next issue of the bulletin.

322 (7) An extension permits the agency to file a notice no more than 120 days after the
323 anniversary date.

324 (8) If an agency fails to file a notice of review or extension on or before the date
325 specified in the notice mandated in Subsection (5), the division shall:

326 (a) publish a notice in the next issue of the bulletin that the rule has expired and is no
327 longer enforceable;

328 (b) remove the rule from the code; and

329 (c) notify the agency that the rule has expired.

330 (9) After a rule expires, an agency must comply with the requirements of Section
331 63G-3-301 to reenact the rule.

332 ~~[(10)(a) Rules issued under the following provisions related to the Department of~~
333 ~~Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to~~
334 ~~the requirements of this section until July 1, 1998:]~~

335 ~~[(i) Title 34, Labor in General;]~~

336 ~~[(ii) Title 34A, Utah Labor Code;]~~
 337 ~~[(iii) Title 35A, Utah Workforce Services Code;]~~
 338 ~~[(iv) Title 40, Chapter 2, Coal Mines; and]~~
 339 ~~[(v) Title 57, Chapter 21, Utah Fair Housing Act.]~~
 340 ~~[(b) Any rule described in Subsection (10)(a) that would have expired on or after July~~
 341 ~~1, 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of~~
 342 ~~Workforce Services or Labor Commission files:]~~

343 ~~[(i) the notice of review, described in Subsection (3); or]~~

344 ~~[(ii) an extension described in Subsection (6).]~~

345 Section 4. Section **78B-3-404** is amended to read:

346 **78B-3-404. Statute of limitations -- Exceptions -- Application.**

347 (1) A malpractice action against a health care provider shall be commenced within two
 348 years after the plaintiff or patient discovers, or through the use of reasonable diligence should
 349 have discovered the injury, whichever first occurs, but not to exceed four years after the date of
 350 the alleged act, omission, neglect, or occurrence.

351 (2) Notwithstanding Subsection (1):

352 (a) in an action where the allegation against the health care provider is that a foreign
 353 object has been wrongfully left within a patient's body, the claim shall be barred unless
 354 commenced within one year after the plaintiff or patient discovers, or through the use of
 355 reasonable diligence should have discovered, the existence of the foreign object wrongfully left
 356 in the patient's body, whichever first occurs; or

357 (b) in an action where it is alleged that a patient has been prevented from discovering
 358 misconduct on the part of a health care provider because that health care provider has
 359 affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred
 360 unless commenced within one year after the plaintiff or patient discovers, or through the use of
 361 reasonable diligence, should have discovered the fraudulent concealment, whichever first
 362 occurs.

363 ~~[(3) The limitations in this section shall apply to all persons, regardless of minority or~~
 364 ~~other legal disability under Section 78B-2-108 or any other provision of the law.]~~

365 Section 5. **Repealer.**

366 This bill repeals:

- 367 Section **20A-7-401, Limitation -- Land use ordinances and budgets.**
- 368 Section **61-2g-303, Approval of an expert.**
- 369 Section **62A-2-108.3, Local government -- Certified local inspector -- Local**
- 370 **inspection of a residential treatment facility -- Reporting violations.**
- 371 Section **76-9-503, Presumption of malice -- Reading or seeing by another not**
- 372 **necessary -- Liability of newspaper or serial publication personnel.**
- 373 Section **76-10-1229, Distribution of pornographic material through cable television**
- 374 **prohibited -- Definitions -- Prosecution of violation.**