

1 **DECEPTION DETECTION EXAMINERS LICENSING**

2 **AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Francis D. Gibson**

6 Senate Sponsor: Deidre M. Henderson

7

LONG TITLE

8 **General Description:**

9 This bill amends provisions of the Deception Detection Examiners Licensing Act and
10 related provisions.
11

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ creates a new license within the Division of Occupational and Professional
- 15 Licensing for a deception detection examination administrator;
- 16 ▶ defines deception detection examination administrator and the qualifications for
- 17 receiving a license as a deception detection examination administrator;
- 18 ▶ provides certain exemptions for a law enforcement officer who is using a software
- 19 application designed for detecting deception; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **58-1-307**, as last amended by Laws of Utah 2012, Chapter 150



- 28 [58-64-102](#), as last amended by Laws of Utah 2008, Chapter 211
- 29 [58-64-301](#), as enacted by Laws of Utah 1995, Chapter 215
- 30 [58-64-302](#), as last amended by Laws of Utah 2009, Chapter 183
- 31 [58-64-303](#), as enacted by Laws of Utah 1995, Chapter 215
- 32 [58-64-601](#), as enacted by Laws of Utah 1995, Chapter 215
- 33 [58-64-701](#), as enacted by Laws of Utah 1995, Chapter 215

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

36 Section 1. Section **58-1-307** is amended to read:

37 **58-1-307. Exemptions from licensure.**

38 (1) Except as otherwise provided by statute or rule, the following individuals may
39 engage in the practice of their occupation or profession, subject to the stated circumstances and
40 limitations, without being licensed under this title:

41 (a) an individual serving in the armed forces of the United States, the United States
42 Public Health Service, the United States Department of Veterans Affairs, or other federal
43 agencies while engaged in activities regulated under this chapter as a part of employment with
44 that federal agency if the individual holds a valid license to practice a regulated occupation or
45 profession issued by any other state or jurisdiction recognized by the division;

46 (b) a student engaged in activities constituting the practice of a regulated occupation or
47 profession while in training in a recognized school approved by the division to the extent the
48 activities are supervised by qualified faculty, staff, or designee and the activities are a defined
49 part of the training program;

50 (c) an individual engaged in an internship, residency, preceptorship, postceptorship,
51 fellowship, apprenticeship, or on-the-job training program approved by the division while
52 under the supervision of qualified individuals;

53 (d) an individual residing in another state and licensed to practice a regulated
54 occupation or profession in that state, who is called in for a consultation by an individual
55 licensed in this state, and the services provided are limited to that consultation;

56 (e) an individual who is invited by a recognized school, association, society, or other
57 body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a
58 regulated occupation or profession if the individual does not establish a place of business or

59 regularly engage in the practice of the regulated occupation or profession in this state;

60 (f) an individual licensed under the laws of this state, other than under this title, to
61 practice or engage in an occupation or profession, while engaged in the lawful, professional,
62 and competent practice of that occupation or profession;

63 (g) an individual licensed in a health care profession in another state who performs that
64 profession while attending to the immediate needs of a patient for a reasonable period during
65 which the patient is being transported from outside of this state, into this state, or through this
66 state;

67 (h) an individual licensed in another state or country who is in this state temporarily to
68 attend to the needs of an athletic team or group, except that the practitioner may only attend to
69 the needs of the athletic team or group, including all individuals who travel with the team or
70 group in any capacity except as a spectator;

71 (i) an individual licensed and in good standing in another state, who is in this state:

72 (i) temporarily, under the invitation and control of a sponsoring entity;

73 (ii) for a reason associated with a special purpose event, based upon needs that may
74 exceed the ability of this state to address through its licensees, as determined by the division;
75 and

76 (iii) for a limited period of time not to exceed the duration of that event, together with
77 any necessary preparatory and conclusionary periods;

78 (j) a law enforcement officer, as defined under Section 53-13-103, who:

79 (i) is operating a voice stress analyzer or software application designed for detecting
80 deception in the course of the officer's [~~full-time~~] full or part-time employment with a federal,
81 state, or local law enforcement agency;

82 (ii) has completed the manufacturer's training course and is certified by the
83 manufacturer to operate [~~that~~] the voice stress analyzer or software application designed for
84 detecting deception; and

85 (iii) is operating the voice stress analyzer or software application designed for detecting
86 deception in accordance with Section 58-64-601, regarding deception detection instruments;
87 and

88 (k) the spouse of an individual serving in the armed forces of the United States while
89 the individual is stationed within this state, provided:

90 (i) the spouse holds a valid license to practice a regulated occupation or profession
91 issued by any other state or jurisdiction recognized by the division; and

92 (ii) the license is current and the spouse is in good standing in the state of licensure.

93 (2) (a) A practitioner temporarily in this state who is exempted from licensure under
94 Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the
95 practitioner derives authority to practice.

96 (b) Violation of a limitation imposed by this section constitutes grounds for removal of
97 exempt status, denial of license, or other disciplinary proceedings.

98 (3) An individual who is licensed under a specific chapter of this title to practice or
99 engage in an occupation or profession may engage in the lawful, professional, and competent
100 practice of that occupation or profession without additional licensure under other chapters of
101 this title, except as otherwise provided by this title.

102 (4) Upon the declaration of a national, state, or local emergency, a public health
103 emergency as defined in Section [26-23b-102](#), or a declaration by the President of the United
104 States or other federal official requesting public health-related activities, the division in
105 collaboration with the board may:

106 (a) suspend the requirements for permanent or temporary licensure of individuals who
107 are licensed in another state for the duration of the emergency while engaged in the scope of
108 practice for which they are licensed in the other state;

109 (b) modify, under the circumstances described in this Subsection (4) and Subsection
110 (5), the scope of practice restrictions under this title for individuals who are licensed under this
111 title as:

112 (i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah
113 Osteopathic Medical Practice Act;

114 (ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure
115 Compact;

116 (iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

117 (iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b,
118 Pharmacy Practice Act;

119 (v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;

120 (vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist

121 Practice Act; and

122 (vii) a physician assistant under Chapter 70a, Physician Assistant Act;

123 (c) suspend the requirements for licensure under this title and modify the scope of

124 practice in the circumstances described in this Subsection (4) and Subsection (5) for medical

125 services personnel or paramedics required to be certified under Section 26-8a-302;

126 (d) suspend requirements in Subsections 58-17b-620(3) through (6) which require

127 certain prescriptive procedures;

128 (e) exempt or modify the requirement for licensure of an individual who is activated as

129 a member of a medical reserve corps during a time of emergency as provided in Section

130 26A-1-126; and

131 (f) exempt or modify the requirement for licensure of an individual who is registered as

132 a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency

133 Volunteer Health Practitioners Act.

134 (5) Individuals exempt under Subsection (4)(c) and individuals operating under

135 modified scope of practice provisions under Subsection (4)(b):

136 (a) are exempt from licensure or subject to modified scope of practice for the duration

137 of the emergency;

138 (b) must be engaged in the distribution of medicines or medical devices in response to

139 the emergency or declaration; and

140 (c) must be employed by or volunteering for:

141 (i) a local or state department of health; or

142 (ii) a host entity as defined in Section 26-49-102.

143 (6) In accordance with the protocols established under Subsection (8), upon the

144 declaration of a national, state, or local emergency, the Department of Health or a local health

145 department shall coordinate with public safety authorities as defined in Subsection

146 26-23b-110(1) and may:

147 (a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a

148 controlled substance to prevent or treat a disease or condition that gave rise to, or was a

149 consequence of, the emergency; or

150 (b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not

151 a controlled substance:

152 (i) if necessary, to replenish a commercial pharmacy in the event that the commercial
153 pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication
154 is exhausted; or

155 (ii) for dispensing or direct administration to treat the disease or condition that gave
156 rise to, or was a consequence of, the emergency by:

157 (A) a pharmacy;

158 (B) a prescribing practitioner;

159 (C) a licensed health care facility;

160 (D) a federally qualified community health clinic; or

161 (E) a governmental entity for use by a community more than 50 miles from a person
162 described in Subsections (6)(b)(ii)(A) through (D).

163 (7) In accordance with protocols established under Subsection (8), upon the declaration
164 of a national, state, or local emergency, the Department of Health shall coordinate the
165 distribution of medications:

166 (a) received from the strategic national stockpile to local health departments; and

167 (b) from local health departments to emergency personnel within the local health
168 departments' geographic region.

169 (8) The Department of Health shall establish by rule, made in accordance with Title
170 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing,
171 and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is
172 not a controlled substance in the event of a declaration of a national, state, or local emergency.
173 The protocol shall establish procedures for the Department of Health or a local health
174 department to:

175 (a) coordinate the distribution of:

176 (i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a
177 controlled substance received by the Department of Health from the strategic national stockpile
178 to local health departments; and

179 (ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription
180 medication received by a local health department to emergency personnel within the local
181 health department's geographic region;

182 (b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral,

183 an antibiotic, or other prescription medication that is not a controlled substance to the contact
 184 of a patient, as defined in Section 26-6-2, without a patient-practitioner relationship, if the
 185 contact's condition is the same as that of the physician's patient; and

186 (c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral,
 187 an antibiotic, or other non-controlled prescription medication to an individual who:

188 (i) is working in a triage situation;

189 (ii) is receiving preventative or medical treatment in a triage situation;

190 (iii) does not have coverage for the prescription in the individual's health insurance

191 plan;

192 (iv) is involved in the delivery of medical or other emergency services in response to
 193 the declared national, state, or local emergency; or

194 (v) otherwise has a direct impact on public health.

195 (9) The Department of Health shall give notice to the division upon implementation of
 196 the protocol established under Subsection (8).

197 Section 2. Section 58-64-102 is amended to read:

198 **58-64-102. Definitions.**

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

200 (1) "Board" means the Deception Detection Examiners Board created in Section

201 58-64-201.

202 (2) "Deception detection examination" means the use of an instrument, or software
 203 application designed for detecting deception, on an individual for the purpose of detecting
 204 whether that individual is engaged in deception.

205 (3) "Deception detection examination administrator" means an individual who engages
 206 in or represents that the individual is engaged in:

207 (a) conducting or administering a deception detection examination using a software
 208 application designed for detecting deception without intervention from the examination
 209 administrator or interpreting; or

210 (b) the interpretation of deception detection examination results derived from a
 211 software application designed for detecting deception.

212 [~~3~~] (4) "Deception detection examiner" means an individual who engages in or

213 represents that the individual is engaged in conducting or performing deception detection

214 examinations or in the interpretation of deception detection examinations.

215 ~~[(4)]~~ (5) "Deception detection intern" means an individual who engages in deception
216 detection examinations under the supervision and control of a deception detection examiner for
217 the purpose of training and qualification as a deception detection examiner.

218 ~~[(5)]~~ (6) "Instrument" means a polygraph, voice stress analyzer, ocular-motor test, or
219 any other device or software application that records the examinee's cardiovascular patterns,
220 respiratory patterns, galvanic skin response, cognitive response, eye behavior, memory recall,
221 or other physiologic characteristics of the examinee for the purpose of monitoring factors
222 relating to whether the examinee is truthful or engaged in deception.

223 ~~[(6)]~~ (7) "Unlawful conduct" ~~[is as]~~ means the same as that term is defined in Sections
224 58-1-501 and 58-64-501.

225 ~~[(7)]~~ (8) "Unprofessional conduct" ~~[is as]~~ means the same as that term is defined in
226 Sections 58-1-501 and 58-64-502 and as may be further defined by rule.

227 Section 3. Section **58-64-301** is amended to read:

228 **58-64-301. Licensure required -- License classifications.**

229 (1) A license is required to engage in the practice of deception detection, except as
230 specifically provided in Section 58-64-304 or 58-1-307.

231 (2) The division shall issue to an individual who qualifies under this chapter a license
232 in the classifications of:

- 233 (a) deception detection examiner; ~~[or]~~
234 (b) deception detection intern~~[-];~~ or
235 (c) deception detection examination administrator.

236 Section 4. Section **58-64-302** is amended to read:

237 **58-64-302. Qualifications for licensure.**

238 (1) Each applicant for licensure as a deception detection examiner ~~[shall]~~:

- 239 (a) shall submit an application in a form prescribed by the division;
240 (b) shall pay a fee determined by the department under Section 63J-1-504;
241 (c) shall be of good moral character in that the applicant has not been convicted of a
242 felony, a misdemeanor involving moral turpitude, or any other crime which when considered
243 with the duties and responsibilities of a deception detection examiner is considered by the
244 division and the board to indicate that the best interests of the public will not be served by

245 granting the applicant a license;

246 (d) may not have been declared by any court of competent jurisdiction incompetent by
247 reason of mental defect or disease and not been restored;

248 (e) may not be currently suffering from habitual drunkenness or from drug addiction or
249 dependence;

250 (f) shall have completed one of the following:

251 (i) have earned a bachelor's degree from a four year university or college meeting
252 standards established by the division by rule in collaboration with the board;

253 (ii) have completed not less than 8,000 hours of investigation experience approved by
254 the division in collaboration with the board; or

255 (iii) have completed a combination of university or college education and investigation
256 experience, as defined by rule by the division in collaboration with the board as being
257 equivalent to the requirements under Subsection (1)(f)(i) or (1)(f)(ii);

258 (g) shall have successfully completed a training program in deception deception
259 meeting criteria established by rule by the division in collaboration with the board; and

260 (h) shall have performed satisfactorily as a licensed deception detection intern for a
261 period of not less than one year and shall have satisfactorily conducted not less than 100
262 deception detection examinations under the supervision of a licensed deception detection
263 examiner.

264 (2) Each applicant for licensure as a deception detection intern [~~shall~~]:

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

266 (b) shall pay a fee determined by the department under Section [63J-1-504](#);

267 (c) shall be of good moral character in that the applicant has not been convicted of a
268 felony, a misdemeanor involving moral turpitude, or any other crime which when considered
269 with the duties and responsibilities of a deception detection intern is considered by the division
270 and the board to indicate that the best interests of the public will not be served by granting the
271 applicant a license;

272 (d) may not have been declared by any court of competent jurisdiction incompetent by
273 reason of mental defect or disease and not been restored;

274 (e) may not be currently suffering from habitual drunkenness or from drug addiction or
275 dependence;

- 276 (f) shall have completed one of the following:
- 277 (i) have earned a bachelor's degree from a four year university or college meeting
- 278 standards established by the division by rule in collaboration with the board;
- 279 (ii) have completed not less than 8,000 hours of investigation experience approved by
- 280 the division in collaboration with the board; or
- 281 (iii) have completed a combination of university or college education and investigation
- 282 experience, as defined by rule by the division in collaboration with the board as being
- 283 equivalent to the requirements under Subsection (2)(f)(i) or (2)(f)(ii);
- 284 (g) shall have successfully completed a training program in deception detection
- 285 meeting criteria established by rule by the division in collaboration with the board; and
- 286 (h) shall provide the division with an intern supervision agreement in a form prescribed
- 287 by the division under which:
- 288 (i) a licensed deception detection examiner agrees to supervise the intern; and
- 289 (ii) the applicant agrees to be supervised by that licensed deception detection examiner.
- 290 (3) Each applicant for licensure as a deception detection examination administrator:
- 291 (a) shall submit an application in a form prescribed by the division;
- 292 (b) shall pay a fee determined by the department under Section [63J-1-504](#);
- 293 (c) shall be of good moral character in that the applicant has not been convicted of a
- 294 felony, a misdemeanor involving moral turpitude, or any other crime that when considered with
- 295 the duties and responsibilities of a deception detection examination administrator is considered
- 296 by the division and the board to indicate that the best interests of the public will not be served
- 297 by granting the applicant a license;
- 298 (d) may not have been declared by a court of competent jurisdiction incompetent by
- 299 reason of mental defect or disease and not been restored;
- 300 (e) may not be currently suffering from habitual drunkenness or from drug addiction or
- 301 dependence;
- 302 (f) shall have earned an associate degree from a state-accredited university or college or
- 303 have an equivalent number of years' work experience; and
- 304 (g) shall have successfully completed a training program and have obtained
- 305 certification in deception detection examination administration provided by the manufacturer
- 306 of a scientific or technology-based software application solution that is approved by the

307 director.

308 [~~(3)~~] (4) To determine if an applicant meets the qualifications of Subsection (1)(c) [~~or~~],
309 (2)(c), or (3)(c) the division shall provide an appropriate number of copies of fingerprint cards
310 to the Department of Public Safety with the division's request to:

311 (a) conduct a search of records of the Department of Public Safety for criminal history
312 information relating to each applicant for licensure under this chapter; and

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

315 [~~(4)~~] (5) The Department of Public Safety shall send to the division:

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

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

322 [~~(5)~~] (6) (a) The division shall charge each applicant a fee, in accordance with Section
323 [63J-1-504](#), equal to the cost of performing the records reviews under this section.

324 (b) The division shall pay the Department of Public Safety the costs of all records
325 reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews
326 under this chapter.

327 [~~(6)~~] (7) Information obtained by the division from the reviews of criminal history
328 records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the
329 division only for the purpose of determining if an applicant for licensure under this chapter is
330 qualified for licensure.

331 Section 5. Section **58-64-303** is amended to read:

332 **58-64-303. Term of license -- Expiration -- Renewal.**

333 (1) The division shall issue each license under this chapter in accordance with a
334 two-year renewal cycle established by rule. The division may by rule extend or shorten a
335 renewal period by as much as one year to stagger the renewal cycles it administers.

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

337 (a) having performed not less than 25 deception detection examinations during the two

338 years immediately preceding the date of the renewal notice[-]; and

339 (b) obtaining re-certification within the past two years from the manufacturer of a
340 scientific or technology-based software solution, if the licensee is renewing a deception
341 detection examination administrator license.

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

344 Section 6. Section 58-64-601 is amended to read:

345 **58-64-601. Deception detection instruments.**

346 (1) Instruments or software applications used in performing deception detection
347 examinations shall be those that are generally recognized in the profession or, if approved by
348 the director, those with results published in peer-reviewed, scientific journals generally
349 recognized by the scientific community.

350 (2) An instrument or software application used for deception detection shall have a
351 permanent recording or written report produced by the instrument or software application for
352 objective analysis by the examiner, the division, or the board.

353 (3) A written interpretation by an examiner while conducting a deception detection
354 examination does not satisfy the requirements of a permanent recording.

355 Section 7. Section 58-64-701 is amended to read:

356 **58-64-701. State preemption of local regulation.**

357 (1) A political subdivision of [~~this~~] the state may not enact [~~any~~] legislation, [~~code, or~~
358 ~~ordinance, or make any rules~~] ordinances, or rules relating to the licensing, training, or
359 regulation of deception detection examiners [~~or~~], deception detection interns, or deception
360 detection examination administrators.

361 (2) Any legislation, [~~code, ordinance, or rules~~] ordinances, or rules made by [~~any~~] a
362 political subdivision of [~~this~~] the state[-] relating to the licensing, training, or regulation of
363 deception detection examiners [~~or~~], deception detection interns, or deception detection
364 examination administrators is superseded by this chapter.