

SB0136S01 compared with SB0136

~~text~~ shows text that was in SB0136 but was deleted in SB0136S01.

text shows text that was not in SB0136 but was inserted into SB0136S01.

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Senator Evan J. Vickers proposes the following substitute bill:

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: ~~_____~~ Don L. Ipson

LONG TITLE

General Description:

This bill modifies provisions related to occupational and professional licensing.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~provides that~~ describes requirements for assigning certain claims by a qualified beneficiary ~~are not assignable~~;
- ▶ provides that the Division of Occupational and Professional Licensing (DOPL) shall comply with the Open and Public Meetings Act;
- ▶ modifies provisions related to DOPL's adjudicative proceedings and rulemaking

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authority;

- ▶ modifies provisions related to licensure requirements, licensure exemptions, the reinstatement of licenses, grounds for denying licenses, and penalties for the conduct of licensees under DOPL;
- ▶ modifies provisions related to access to information in the controlled substance database;
- ▶ modifies provisions related to the confidentiality of certain records provided to DOPL; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

38-11-203, as last amended by Laws of Utah 2004, Chapter 42

38-11-204, as last amended by Laws of Utah 2012, Chapter 278

58-1-106, as last amended by Laws of Utah 2008, Chapter 382

58-1-109, as last amended by Laws of Utah 2008, Chapter 382

58-1-302, as last amended by Laws of Utah 2013, Chapter 262

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

58-1-308, as last amended by Laws of Utah 2009, Chapter 183

58-1-401, as last amended by Laws of Utah 2013, Chapter 262

58-1-502, as last amended by Laws of Utah 2013, Chapter 262

58-13-3, as last amended by Laws of Utah 2014, Chapter 400

58-15-2, as last amended by Laws of Utah 2011, Chapter 366

58-16a-302, as last amended by Laws of Utah 2014, Chapter 305

58-17b-610.5, as enacted by Laws of Utah 2015, Chapter 336

58-24b-301, as enacted by Laws of Utah 2009, Chapter 220

58-24b-302, as enacted by Laws of Utah 2009, Chapter 220

58-24b-303, as last amended by Laws of Utah 2013, Chapter 31

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58-26a-501, as last amended by Laws of Utah 2008, Chapter 265

58-37f-301, as last amended by Laws of Utah 2015, Chapters 89, 326, and 336

58-37f-601, as last amended by Laws of Utah 2015, Chapter 326

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

58-55-302, as last amended by Laws of Utah 2015, Chapter 258

58-55-307, as last amended by Laws of Utah 2008, Chapter 382

58-60-508, as last amended by Laws of Utah 2013, Chapter 262

58-63-302, as last amended by Laws of Utah 2013, Chapter 436

58-64-304, as enacted by Laws of Utah 1995, Chapter 215

58-70a-305, as last amended by Laws of Utah 2010, Chapter 37

58-74-102, as last amended by Laws of Utah 2004, Chapter 77

58-77-601, as last amended by Laws of Utah 2014, Chapter 189

58-81-102, as enacted by Laws of Utah 2009, Chapter 263

Utah Code Sections Affected by Coordination Clause:

58-64-304, as enacted by Laws of Utah 1995, Chapter 215

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

Section 1. Section **38-11-203** is amended to read:

38-11-203. Disbursements from the fund -- Limitations.

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

- (a) the claimant was a qualified beneficiary during the construction on a residence;
- (b) the claimant complied with the requirements of Section 38-11-204; [~~and~~]
- (c) there is adequate money in the fund to pay the amount ordered[~~;~~]; and
- (d) the claimant provided the qualified services that are the basis of the claim.

(2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:

- (a) the laborer complied with the requirements of Subsection 38-11-204(7); and
- (b) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

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(b) The director shall order payment of the qualified services as established by evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified services in the judgment to the extent the qualified services are attributable to the owner-occupied residence at issue in the claim.

(c) The director shall order payment of interest on amounts claimed for qualified services based on the current prime interest rate at the time payment was due to the date the claim is approved for payment except for delays attributable to the claimant but not more than 10% per annum.

(d) The rate shall be the prime lending rate as published in the Wall Street Journal on the first business day of each calendar year adjusted annually.

(e) The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the director shall order payment of reasonable costs as supported by evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

(f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount stated in a judgment, or if no judgment has been obtained but the contract provides for attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be paid by the director.

(4) (a) Payments made from the fund may not exceed \$75,000 per construction project to qualified beneficiaries and laborers who have claim against the fund for that construction project.

(b) If claims against the fund for a construction project exceed \$75,000, the \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.

(5) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.

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(6) (a) A payment of any claim upon the fund ~~(is not assignable)~~ may not be made to an assignee or transferee unless an order issued by the director finds that:

(i) the claim is assigned or transferred to a person who is a qualified beneficiary; and

(ii) the person assigning or transferring the claim:

(A) was a qualified beneficiary during the construction on a residence; and

(B) provided the qualified services that are the basis of the claim.

(b) A claimant who is an assignee or transferee of a claim upon the fund under this Subsection (6) does not have to meet the requirements of Subsections 38-11-203(1)(a) and (d).

Section 2. Section 38-11-204 is amended to read:

38-11-204. Claims against the fund -- Requirement to make a claim --

Qualifications to receive compensation -- Qualifications to receive a certificate of compliance.

(1) To claim recovery from the fund a person shall:

(a) meet the requirements of Subsection (4) or (6);

(b) pay an application fee determined by the division under Section 63J-1-504; and

(c) file with the division a completed application on a form provided by the division

accompanied by supporting documents establishing:

(i) that the person meets the requirements of Subsection (4) or (6);

(ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and

(iii) the basis for the claim.

(2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

(a) from the date the judgment required by Subsection (4)(d) is entered;

(b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or

(c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.

(3) The issuance of a certificate of compliance is governed by Section 38-11-110.

(4) To recover from the fund, regardless of whether the residence is occupied by the

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owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:

(A) for the performance of qualified services;

(B) to obtain the performance of qualified services by others; or

(C) for the supervision of the performance by others of qualified services in construction on that residence;

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built housing retailer for the purchase of an owner-occupied residence;

(b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;

(c) (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or

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supplier;

(d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);

(ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) ~~(A)~~ the qualified beneficiary has:

~~(A)~~ (A) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;

~~(B)~~ (B) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b); ~~and~~

~~(C)~~ (C) made reasonable efforts to obtain asset information from the supplemental proceedings; and

~~(D)~~ (D) if assets subject to execution are discovered as a result of the order required under this Subsection (4)(d)(iii)~~(A)~~ or for any other reason, ~~to obtain~~ obtained the issuance of a writ of execution from a court of competent jurisdiction; ~~or~~ and

(iv) ~~if the nonpaying party has filed bankruptcy,~~ the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action~~, if the nonpaying party has filed bankruptcy~~;

(e) the qualified beneficiary is not entitled to reimbursement from any other person; and

(f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified

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beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

(6) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

(a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

(b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(9) The director shall have equitable power to determine if the requirements of Subsections (4)(a) and (b) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.

Section 3. Section **58-1-106** is amended to read:

58-1-106. Division -- Duties, functions, and responsibilities.

(1) The duties, functions, and responsibilities of the division include the following:

(a) prescribing, adopting, and enforcing rules to administer this title;

(b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;

(c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by

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the director or by the director's designee;

(d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;

(e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;

(f) ~~[giving public notice of board meetings]~~ complying with Title 52, Chapter 4, Open and Public Meetings Act;

~~[(g) keeping records of board meetings, proceedings, and actions and making those records available for public inspection upon request;]~~

~~[(h)]~~ (g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;

~~[(i)]~~ (h) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;

~~[(j)]~~ (i) preparing and submitting to the executive director a budget of the expenses for the division;

~~[(k)]~~ (j) establishing the time and place for the administration of examinations; and

~~[(l)]~~ (k) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

(2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)~~[(k)]~~(k), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.

(b) A request under Subsection (3)(a) is limited to providing information on only one licensee per request.

(c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a).

Section 4. Section **58-1-109** is amended to read:

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58-1-109. Presiding officers -- Content of orders -- Recommended orders -- Final orders -- Appeal of orders.

(1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.

(2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63G-4-102(4), Sections 63G-4-204 through 63G-4-207, and 63G-4-209.

(3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.

(4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.

(5) (a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.

(b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).

(6) If the director is unable for any reason to rule upon a recommended order of a

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presiding officer, the director may designate another person within the division to issue a final order.

(7) If the director or the director's designee does not initiate additional fact finding or issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or the director's designee.

(8) The final order of the director may be appealed by filing a request for agency review with the executive director or the executive director's designee within the department.

(9) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

Section 5. Section **58-1-302** is amended to read:

58-1-302. License by endorsement.

(1) (a) The division may issue a license without examination to a person who has been licensed in a state, district, or territory of the United States, or in a foreign country, where the education, experience, and examination requirements are, or were at the time the license was issued, substantially equal to the requirements of this state.

(b) The division, in consultation with the applicable licensing board, may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, prescribing the requirements of this Subsection (1).

(2) Before a person may be issued a license under this section, the person shall produce satisfactory evidence of the person's identity, qualifications, and good standing in the occupation or profession for which licensure is sought.

Section 6. Section **58-1-307** is amended to read:

58-1-307. Exemptions from licensure.

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

(a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or

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profession issued by any other state or jurisdiction recognized by the division;

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

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

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

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

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

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

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

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

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

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division;
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(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods; and

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

~~[(i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;]~~

~~[(ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and]~~

~~[(iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments; and]~~

~~[(k)]~~ (j) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

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

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

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

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

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

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

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

(b) modify, under the circumstances described in this Subsection (4) and Subsection

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(5), the scope of practice restrictions under this title for individuals who are licensed under this title as:

- (i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;
 - (ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;
 - (iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;
 - (iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;
 - (v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;
 - (vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and
 - (vii) a physician assistant under Chapter 70a, Physician Assistant Act;
- (c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302;
- (d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;
- (e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and
- (f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):

- (a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;
- (b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and
- (c) must be employed by or volunteering for:

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- (i) a local or state department of health; or
- (ii) a host entity as defined in Section 26-49-102.

(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:

(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or

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

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

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

- (A) a pharmacy;
- (B) a prescribing practitioner;
- (C) a licensed health care facility;
- (D) a federally qualified community health clinic; or

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

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

- (a) received from the strategic national stockpile to local health departments; and
- (b) from local health departments to emergency personnel within the local health departments' geographic region.

(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is

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not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:

(a) coordinate the distribution of:

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

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

(b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient~~[, as defined in Section 26-6-2,]~~ without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's patient; and

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

(i) is working in a triage situation;

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

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

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

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

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

Section 7. Section **58-1-308** is amended to read:

58-1-308. Term of license -- Expiration of license -- Renewal of license --

Reinstatement of license -- Application procedures.

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

(b) A renewal period may be extended or shortened by as much as one year to maintain

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established renewal cycles or to change an established renewal cycle.

(2) (a) The expiration date of a license shall be shown on the license.

(b) A license that is not renewed prior to the expiration date shown on the license automatically expires.

(c) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity.

(d) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.

(e) Expiration of licensure is not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

(3) (a) The division shall notify each licensee in accordance with procedures established by rule that the licensee's license is due for renewal and that unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.

(b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:

- (i) continuing education;
- (ii) continuing competency;
- (iii) quality assurance;
- (iv) utilization plan and protocol;
- (v) financial responsibility;
- (vi) certification renewal; and
- (vii) calibration of equipment.

(4) (a) (i) An application for renewal that complies with Subsection (3) is complete.

(ii) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the qualifications for continued licensure.

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(b) (i) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees.

(ii) If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(c) The application procedures specified in Subsection 58-1-301(2), apply to renewal applications to the extent they are not in conflict with this section.

(5) (a) Any license that is not renewed may be reinstated [~~at any time within two years after nonrenewal~~]:

(i) upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Section 63J-1-504, and upon submission of documentation showing completion of or compliance with renewal qualifications[-]; and

(ii) (A) at any time within two years after nonrenewal; or

(B) between two years and five years after nonrenewal, if established by rule made by the division in consultation with the applicable licensing board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.

(c) Except as otherwise provided by rule, a license that is reinstated no later than 120 days after it expires shall be retroactively reinstated to the date it expired.

(6) (a) [~~H~~] Except as provided in Subsection (5)(a), if not reinstated within two years, the holder may obtain a license only if the holder meets requirements provided by the division by rule or by statute for a new license.

(b) Each licensee under this title who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States may reinstate the licensee's license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any

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time within six months after reestablishing domicile within Utah or terminating full-time government service.

Section 8. Section **58-1-401** is amended to read:

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

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

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

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

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

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

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

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

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

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

(b) a person who engages in or represents that the person is engaged in an occupation or profession regulated under this title; and

(c) a person who otherwise violates this title or a rule adopted under this title.

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

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

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

(ii) Notwithstanding Subsection (6)(b)(i), the division may refuse to issue a license due to unprofessional or unlawful conduct that occurred more than 10 years before a request or application for licensure is made.

Section 9. Section **58-1-502** is amended to read:

58-1-502. Unlawful and unprofessional conduct -- Penalties.

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

(2) (a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:

- (i) issue a citation to the person according to this section and any pertinent rules;
- (ii) attempt to negotiate a stipulated settlement; or
- (iii) notify the person to appear before an adjudicative proceeding conducted under

Title 63G, Chapter 4, Administrative Procedures Act.

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

- (A) an uncontested citation;
- (B) a stipulated settlement; or

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

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

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

(d) A citation shall:

(i) be in writing;

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

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

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

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

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

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

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

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

(i) The division may not issue a citation under this section after the expiration of [~~six months~~] one year following the occurrence of a violation.

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

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

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

and

(iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to

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\$2,000 for each day of continued offense.

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

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

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

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

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

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

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

Section 10. Section **58-13-3** is amended to read:

58-13-3. Qualified immunity -- Health professionals -- Charity care.

(1) (a) (i) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost.

(ii) The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.

(b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.

(2) As used in this section:

(a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for

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people unable to pay for health care services.

(b) "Health care professional" means a person licensed under:

- (i) Chapter 5a, Podiatric Physician Licensing Act;
- (ii) Chapter 16a, Utah Optometry Practice Act;
- (iii) Chapter 17b, Pharmacy Practice Act;
- (iv) Chapter 24b, Physical Therapy Practice Act;
- (v) Chapter 31b, Nurse Practice Act;
- (vi) Chapter 40, Recreational Therapy Practice Act;
- (vii) Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
- (viii) Chapter 42a, Occupational Therapy Practice Act;
- (ix) Chapter 44a, Nurse Midwife Practice Act;
- (x) Chapter 49, Dietitian Certification Act;
- (xi) Chapter 60, Mental Health Professional Practice Act;
- (xii) Chapter 67, Utah Medical Practice Act;
- (xiii) Chapter 68, Utah Osteopathic Medical Practice Act;
- (xiv) Chapter 69, Dentist and Dental Hygienist Practice Act;
- (xv) Chapter 70a, Physician Assistant Act; ~~and~~
- (xvi) Chapter 71, Naturopathic Physician Practice Act; and
- ~~[(xvi)]~~ (xvii) Chapter 73, Chiropractic Physician Practice Act.

(c) "Remuneration or compensation":

(i) (A) means direct or indirect receipt of any payment by a health care professional or health care facility on behalf of the patient, including payment or reimbursement under Medicare or Medicaid, or under the state program for the medically indigent on behalf of the patient; and

(B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and

(ii) does not mean:

(A) any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as:

(I) medical supplies;

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(II) drugs; or

(III) a charitable donation that is restricted for charitable services at the health care facility; or

(B) incidental reimbursements to the volunteer such as:

(I) food supplied to the volunteer;

(II) clothing supplied to the volunteer to help identify the volunteer during the time of volunteer services;

(III) mileage reimbursement to the volunteer; or

(IV) other similar support to the volunteer.

(3) A health care professional who provides health care treatment at or on behalf of a health care facility is not liable in a medical malpractice action if:

(a) the treatment was within the scope of the health care professional's license under this title;

(b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services:

(i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and

(ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:

(a) the health care facility meets the requirements in Subsection (3)(b);

(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and

(c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and

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wanton.

(5) A health care professional who provides health care treatment at a federally qualified health center, as defined in Subsection 1905(1)(2)(b) of the Social Security Act, or an Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health Care Improvement Act, is not liable in a medical malpractice action if:

(a) the treatment was within the scope of the health care professional's license under this title;

(b) the health care professional:

(i) does not receive compensation or remuneration for treatment provided to any patient that the provider treats at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center; and

(ii) is not eligible to be included in coverage under the Federal Tort Claims Act for the treatment provided at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services:

(i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and

(ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions that are grossly negligent or are willful and wanton.

(6) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(7) The provisions of Subsection (5) apply to treatment provided by a healthcare professional on or after May 13, 2014.

Section 11. Section **58-15-2** is amended to read:

58-15-2. Definitions.

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

(1) "Administrator" means a person who is charged with the general administration of a

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health facility, regardless of whether that person has an ownership interest in the facility and whether his functions and duties are shared with one or more persons.

(2) "Board" means the Health Facility Administrators Licensing Board created in Section 58-15-3.

(3) "Health facility" means a skilled nursing facility, an intermediate care facility, or an intermediate care facility for ~~[people]~~ individuals with an intellectual disability.

(4) "Intermediate care facility" means an institution ~~[which]~~ that provides, on a regular basis, health care and services to ~~[persons]~~ individuals who do not require the degree of care and treatment a hospital or skilled nursing facility provide, but who require health care and services in addition to room and board.

(5) "Intermediate care facility for people with an intellectual disability" means an institution ~~[which]~~ that provides, on a regular basis, health-related care and service to ~~[mentally retarded individuals or persons]~~ individuals with intellectual disabilities as defined in Section 68-3-12.5 or individuals with related conditions, who do not require the degree of care and treatment a hospital or skilled nursing facility provide, but who require health-related care and services above the need for room and board.

(6) "Skilled nursing facility" means an institution primarily providing inpatients with skilled nursing care and related services on a continuing basis for patients who require mental, medical, or nursing care, or service for the rehabilitation of an injured ~~[person]~~ individual, a sick ~~[person]~~ individual, or ~~[a person]~~ an individual with a disability.

(7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) intentionally filing a false report or record, intentionally failing to file a report or record required by state or federal law, or wilfully impeding or obstructing the filing of a required report. These reports or records only include those which are signed in the capacity of a licensed health facility administrator; and

(b) acting in a manner inconsistent with the health and safety of the patients of the health facility in which he is the administrator.

Section 12. Section **58-16a-302** is amended to read:

58-16a-302. Qualifications for licensure.

(1) An applicant for licensure as an optometrist shall:

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- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee as determined by the division under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) (i) be a doctoral graduate of a recognized school of optometry accredited by the American Optometric Association's Accreditation Council on Optometric Education; or
 - (ii) be a graduate of a school of optometry located outside the United States that meets the criteria that would qualify the school for accreditation under Subsection (1)(d)(i), as demonstrated by the applicant for licensure;
 - (e) if the applicant graduated from a recognized school of optometry prior to July 1, 1996, have successfully completed a course of study satisfactory to the division, in consultation with the board, in general and ocular pharmacology and emergency medical care;
 - (f) have passed examinations approved by the division in consultation with the board that include:
 - (i) a standardized national optometry examination;
 - (ii) a standardized clinical examination; and
 - (iii) a standardized national therapeutics examination; and
 - ~~[(iv) the Utah Optometry Law Examination; and]~~
 - (g) meet with the board and representatives of the division, if requested by either party, for the purpose of evaluating the applicant's qualifications for licensure.
- (2) Notwithstanding Subsection (1) and Section 58-1-302, the division shall issue a license under this chapter by endorsement to an individual who:
- (a) submits an application for licensure by endorsement on a form approved by the division;
 - (b) pays a fee established by the division in accordance with Section 63J-1-504;
 - (c) provides satisfactory evidence to the division that the individual is of good moral character;
 - (d) verifies that the individual is licensed as an optometrist in good standing in each state of the United States, or province of Canada, in which the individual is currently licensed as an optometrist; and
 - (e) has been actively engaged in the legal practice of optometry for at least 3,200 hours during the immediately preceding two years in a manner consistent with the legal practice of

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optometry in this state.

Section 13. Section **58-17b-610.5** is amended to read:

58-17b-610.5. Dispensing in emergency department -- Patient's immediate need.

(1) The division shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with hospital pharmacies and the boards of [~~dispensing medical~~] practitioners authorized to prescribe prescription drugs to establish guidelines under which a [~~dispensing medical~~] practitioner may dispense prescription drugs to a patient in a hospital emergency department if:

- (a) the hospital pharmacy is closed;
- (b) in the professional judgment of the [~~dispensing medical~~] practitioner, dispensing the drug is necessary for the patient's immediate needs; and
- (c) dispensing the prescription drug meets protocols established by the hospital pharmacy.

(2) A [~~prescribing medical~~] practitioner in an emergency department may dispense a prescription drug in accordance with Subsection (1).

Section 14. Section **58-24b-301** is amended to read:

58-24b-301. Authority to practice physical therapy.

A person may not engage in the practice of physical therapy, unless the person is:

- (1) licensed under this chapter and practices within the scope of that license; or
- (2) exempted from the licensing requirements of this chapter under Section 58-1-307 or 58-24b-304.

Section 15. Section **58-24b-302** is amended to read:

58-24b-302. Licensure.

- (1) An applicant for a license as a physical therapist shall:
 - (a) be of good moral character;
 - (b) complete the application process, including payment of fees;
 - (c) submit proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency;

~~[(d) pass an open-book, take-home Utah Physical Therapy Law and Rule Examination;]~~

- ~~[(e)]~~ (d) after complying with Subsection (1)(c), pass a licensing examination;

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~~[(f)]~~ (e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

~~[(g)]~~ (f) meet any other requirements established by the division, by rule.

(2) An applicant for a license as a physical therapist assistant shall:

(a) be of good moral character;

(b) complete the application process, including payment of fees set by the division, in accordance with Section 63J-1-504, to recover the costs of administering the licensing requirements relating to physical therapist assistants;

(c) submit proof of graduation from a physical therapist assistant education program that is accredited by a recognized accreditation agency;

~~[(d) pass an open-book, take-home Utah Physical Therapy Law and Rule Examination;]~~

~~[(e)]~~ (d) after complying with Subsection (2)(c), pass a licensing examination;

~~[(f)]~~ (e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

~~[(g)]~~ (f) meet any other requirements established by the division, by rule.

(3) An applicant for a license as a physical therapist who is educated outside of the United States shall:

(a) be of good moral character;

(b) complete the application process, including payment of fees; and

(c) (i) provide satisfactory evidence that the applicant graduated from a professional physical therapist education program that is accredited by a recognized accreditation agency; or

(ii) (A) provide satisfactory evidence that the applicant graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy, without restriction;

(B) provide satisfactory evidence that the education program described in Subsection (3)(c)(ii)(A) is recognized by the government entity responsible for recognizing a physical therapist education program in the country where the program is located; and

(C) pass a credential evaluation to ensure that the applicant has satisfied uniform

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educational requirements;

~~[(d) pass an open-book, take-home Utah Physical Therapy Law and Rule Examination;]~~

~~[(e)]~~ (d) after complying with Subsection (3)(c), pass a licensing examination;

~~[(f)]~~ (e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

~~[(g)]~~ (f) meet any other requirements established by the division, by rule.

(4) The division shall issue a license to a person who holds a current unrestricted license to practice physical therapy in a state, district, or territory of the United States of America, other than Utah, if the person:

(a) is of good moral character;

(b) completes the application process, including payment of fees; and

~~[(c) passes an open-book, take-home Utah Physical Therapy Law and Rule Examination; and]~~

~~[(d)]~~ (c) is able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board.

(5) (a) Notwithstanding Subsection 58-1-307(1)(c), an individual may not engage in an internship in physical therapy, unless the person is:

(i) certified by the division; or

(ii) exempt from licensure under Section 58-24b-304.

(b) The provisions of Subsection (5)(a) apply, regardless of whether the individual is participating in the supervised clinical training program for the purpose of becoming a physical therapist or a physical therapist assistant.

Section 16. Section **58-24b-303** is amended to read:

58-24b-303. Term of license -- Renewal -- Temporary license for physical therapist assistant.

(1) A license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. The division may, by rule, extend or shorten a license renewal process by one year in order to stagger the renewal cycles that the division administers.

(2) At the time of license renewal, the licensee shall provide satisfactory evidence that

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the licensee completed continuing education competency requirements, established by the division, by rule.

(3) If a license renewal cycle is shortened or extended under Subsection (1), the division shall increase or reduce the required continuing education competency requirements accordingly.

(4) A license issued under this chapter expires on the expiration date indicated on the license, unless the license is renewed under this section.

(5) Notwithstanding any other provision of this chapter, the division may, by rule, grant a temporary license, that expires on July 1, 2014, as a physical therapist assistant to an individual who:

(a) was working as a physical therapist assistant in Utah before July 1, 2009; and

(b) complies with the requirements described in Subsections 58-24b-302(2)(a), (b), (c), ~~(f)~~ (e), and ~~(g)~~ (f).

Section 17. Section **58-26a-501** is amended to read:

58-26a-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) using "certified public accountant," "public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless that person:

(a) has a current license as a certified public accountant issued under this chapter; or

(b) qualifies for a practice privilege as provided ~~for~~ in Subsection 58-26a-305(1)~~(a)~~;

(2) a firm assuming or using "certified public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants unless each office of the firm in this state:

(a) is registered with the division; and

(b) meets the requirements of Subsections 58-26a-302(3)(a)(iii) and (iv);

(3) signing or affixing to any accounting or financial statement the person's name or any trade or assumed name used in that person's profession or business, with any wording indicating that the person is an auditor, or with any wording indicating that the person has expert knowledge in accounting or auditing, unless that person is licensed under this chapter and all of the person's offices in this state for the practice of public accountancy are maintained

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and registered as provided in this chapter; and

(4) except as provided in Section 58-26a-305, engaging in the following conduct if not licensed under this chapter to practice public accountancy:

(a) issuing a report on financial statements of any other person, firm, organization, or governmental unit; or

(b) issuing a report using any form of language substantially similar to conventional language used by licensees respecting:

- (i) a review of financial statements; or
- (ii) a compilation of financial statements.

Section 18. Section **58-37f-301** is amended to read:

58-37f-301. Access to database.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(2) The division shall make information in the database and information obtained from other state or federal prescription monitoring programs by means of the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a board member if:

(i) the board member is assigned to monitor a licensee on probation; and

(ii) the board member is limited to obtaining information from the database regarding the specific licensee on probation;

(d) a member of a diversion committee established in accordance with Subsection

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58-1-404(2) if:

(i) the diversion committee member is limited to obtaining information from the database regarding the person whose conduct is the subject of the committee's consideration;

and

(ii) the conduct that is the subject of the committee's consideration includes a violation or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant violation or potential violation under this title;

~~[(e)]~~ (e) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, if the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies; ~~[or]~~

(ii) when the information is requested by the Department of Health in relation to a person or provider whom the Department of Health suspects may be improperly obtaining or providing a controlled substance; or

(iii) in the medical examiner's office;

~~[(d)]~~ (f) in accordance with a written agreement entered into with the department, a designee of the director of the Department of Health, who is not an employee of the Department of Health, whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances pursuant to an application process established in rule by the Department of Health, if:

(i) the designee provides explicit information to the Department of Health regarding the purpose of the scientific studies;

(ii) the scientific studies to be conducted by the designee:

(A) fit within the responsibilities of the Department of Health for health and welfare;

(B) are reviewed and approved by an Institutional Review Board that is approved for human subject research by the United States Department of Health and Human Services; and

(C) are not conducted for profit or commercial gain; and

(D) are conducted in a research facility, as defined by division rule, that is associated with a university or college ~~[in the state]~~ accredited by one or more regional or national

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accrediting agencies recognized by the United States Department of Education;

(iii) the designee protects the information as a business associate of the Department of Health; and

(iv) the identity of the prescribers, patients, and pharmacies in the database are de-identified, confidential, not disclosed in any manner to the designee or to any individual who is not directly involved in the scientific studies;

~~(f)~~ (g) in accordance with the written agreement entered into with the department and the Department of Health, authorized employees of a managed care organization, as defined in 42 C.F.R. Sec. 438, if:

(i) the managed care organization contracts with the Department of Health under the provisions of Section 26-18-405 and the contract includes provisions that:

(A) require a managed care organization employee who will have access to information from the database to submit to a criminal background check; and

(B) limit the authorized employee of the managed care organization to requesting either the division or the Department of Health to conduct a search of the database regarding a specific Medicaid enrollee and to report the results of the search to the authorized employee; and

(ii) the information is requested by an authorized employee of the managed care organization in relation to a person who is enrolled in the Medicaid program with the managed care organization, and the managed care organization suspects the person may be improperly obtaining or providing a controlled substance;

~~(f)~~ (h) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

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(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(g)(i); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(g) (i) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(f)(h), for a purpose described in Subsection (2)(f)(h)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

(h) (j) an employee of the same business that employs a licensed practitioner under

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Subsection (2)[~~(f)~~](h) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the employing business provide written notice to the division of the identity of the designated employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

[~~(f)~~] (k) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is provided or sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

[~~(f)~~] (l) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes described in Subsection (2)[~~(f)~~](j)(i) or (ii), if:

(i) the employee is designated by the pharmacist-in-charge as an individual authorized to access the information on behalf of a licensed pharmacist employed by the pharmacy;

(ii) the pharmacist-in-charge provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

[~~(k)~~] (m) pursuant to a valid search warrant, federal, state, and local law enforcement agencies and state and local prosecutors that are engaged in an investigation related to:

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(i) one or more controlled substances; and

(ii) a specific person who is a subject of the investigation;

~~(f)~~ (n) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;

~~(m)~~ (o) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)~~(m)~~(o)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)~~(m)~~(o)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)~~(m)~~(o)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)~~(m)~~(o), from the database;

~~(n)~~ (p) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made;

~~(o)~~ (q) an individual under Subsection (2)~~(m)~~(p) for the purpose of obtaining a list of the persons and entities that have requested or received any information from the database regarding the individual, except if the individual's record is subject to a pending or current investigation as authorized under this Subsection (2);

~~(p)~~ (r) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63A, Chapter 13, Part 2, Office and Powers; and

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~~(f)~~ (s) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

- (i) a member of the medical panel described in Section 34A-2-601;
- (ii) a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer; or
- (iii) a physician offering a second opinion regarding treatment.

(3) (a) (i) A practitioner described in Subsection (2)~~(f)~~(h) may designate up to three employees to access information from the database under Subsection (2)~~(g)~~(i), (2)~~(h)~~(j), or (4)(c).

(ii) A pharmacist described in Subsection (2)(i) who is a pharmacist-in-charge may designate up to five employees to access information from the database under Subsection (2)~~(f)~~(l).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) establish background check procedures to determine whether an employee designated under Subsection (2)~~(g)~~(i), (2)~~(h)~~(j), or (4)(c) should be granted access to the database; and

(ii) establish the information to be provided by an emergency room employee under Subsection (4).

(c) The division shall grant an employee designated under Subsection (2)~~(g)~~(i), (2)~~(h)~~(j), or (4)(c) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(4) (a) An individual who is employed in the emergency room of a hospital may exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if the individual is designated under Subsection (4)(c) and the licensed practitioner:

- (i) is employed in the emergency room;
- (ii) is treating an emergency room patient for an emergency medical condition; and
- (iii) requests that an individual employed in the emergency room and designated under Subsection (4)(c) obtain information regarding the patient from the database as needed in the

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course of treatment.

(b) The emergency room employee obtaining information from the database shall, when gaining access to the database, provide to the database the name and any additional identifiers regarding the requesting practitioner as required by division administrative rule established under Subsection (3)(b).

(c) An individual employed in the emergency room under this Subsection (4) may obtain information from the database as provided in Subsection (4)(a) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the hospital operating the emergency room provide written notice to the division of the identity of the designated employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)~~(g)~~(i), (2)~~(h)~~(j), or (4)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(5) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

Section 19. Section **58-37f-601** is amended to read:

58-37f-601. Unlawful release or use of database information -- Criminal and civil penalties.

(1) (a) Any person who knowingly and intentionally releases any information in the database or any information obtained from other state or federal prescription monitoring

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programs by means of the database in violation of the limitations under Part 3, Access, is guilty of a third degree felony.

(b) Any person who negligently or recklessly releases any information in the database or any information obtained from other state or federal prescription monitoring programs by means of the database in violation of the limitations under Title 58, Chapter 37f, Part 3, Access, is guilty of a class C misdemeanor.

(2) (a) Any person who obtains or attempts to obtain information from the database or from any other state or federal prescription monitoring programs by means of the database by misrepresentation or fraud is guilty of a third degree felony.

(b) Any person who obtains or attempts to obtain information from the database for a purpose other than a purpose authorized by this chapter or by rule is guilty of a third degree felony.

(3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person any information obtained from the database or from any other state or federal prescription monitoring programs by means of the database for any purpose other than those specified in Part 3, Access.

(b) Each separate violation of this Subsection (3) is a third degree felony and is also subject to a civil penalty not to exceed \$5,000.

(c) The procedure for determining a civil violation of this Subsection (3) is in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(d) Civil penalties assessed under this Subsection (3) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(e) This Subsection (3) does not prohibit a person who obtains information from the database under Subsection 58-37f-301(2)[~~(f)~~, ~~(g)~~, ~~(i)~~](h), (i), (k), or (4)(c) from:

(i) including the information in the person's medical chart or file for access by a person authorized to review the medical chart or file; or

(ii) providing the information to a person in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Section 20. Section **58-44a-302** is amended to read:

58-44a-302. Qualifications for licensure.

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- (1) An applicant for licensure as a nurse midwife shall:
 - (a) submit an application in a form as prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) at the time of application for licensure hold a license in good standing as a registered nurse in Utah, or be at that time qualified for a license as a registered nurse under Title 58, Chapter 31b, Nurse Practice Act;
 - (e) have completed:
 - (i) a certified nurse midwifery education program accredited by the [~~American College of Nurse-Midwives~~] Accreditation Commission for Midwifery Education and approved by the division; or
 - (ii) a nurse midwifery education program located outside of the United States which is approved by the division and is equivalent to a program accredited by the [~~American College of Nurse-Midwives~~] Accreditation Commission for Midwifery Education, as demonstrated by a graduate's being accepted to sit for the national certifying examination administered by the [~~American College of Nurse-Midwives~~] Accreditation Commission for Midwifery Education or its designee; and
 - (f) have passed examinations established by the division rule in collaboration with the board within two years after completion of the approved education program required under Subsection (1)(e).
- (2) For purposes of Subsection (1)(e), as of January 1, 2010, the accredited education program or its equivalent must grant a graduate degree, including post-master's certificate, in nurse midwifery.

Section 21. Section **58-55-302** is amended to read:

58-55-302. Qualifications for licensure.

- (1) Each applicant for a license under this chapter shall:
 - (a) submit an application prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63J-1-504;
 - (c) (i) meet the examination requirements established by rule by the commission with the concurrence of the director, except for the classifications of apprentice plumber and apprentice electrician for whom no examination is required; or

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(ii) if required in Section 58-55-304, the individual qualifier must pass the required examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;

(ii) produce satisfactory evidence of:

(A) two years full-time paid employment experience in the construction industry, which experience, unless more specifically described in this section, may be related to any contracting classification; and

(B) knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare;

(iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a 20-hour course established by rule by the commission with the concurrence of the director, which course may include:

(A) construction business practices;

(B) bookkeeping fundamentals;

(C) mechanics lien fundamentals; and

(D) other aspects of business and construction principles considered important by the commission with the concurrence of the director;

(iv) (A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;

(B) be a licensed master plumber if an applicant for a plumbing contractor's license or a licensed master residential plumber if an applicant for a residential plumbing contractor's license; or

(C) be a licensed elevator mechanic and produce satisfactory evidence of three years experience as an elevator mechanic if an applicant for an elevator contractor's license; and

(v) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant as of the day on which the application is filed that includes for each individual:

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(A) the individual's name, address, birth date, and social security number; and
(B) whether the individual will engage in a construction trade; and
(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2) After approval of an applicant for a contractor's license by the applicable board and the division, the applicant shall file the following with the division before the division issues the license:

(a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(b) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and

(c) proof of registration as required by applicable law with the:

(i) Utah Department of Commerce;

(ii) Division of Corporations and Commercial Code;

(iii) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(iv) State Tax Commission; and

(v) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) (i) A master plumber shall produce satisfactory evidence that the applicant:

(A) has been a licensed journeyman plumber for at least two years and had two years of supervisory experience as a licensed journeyman plumber in accordance with division rule;

(B) has received at least an associate of applied science degree or similar degree following the completion of a course of study approved by the division and had one year of supervisory experience as a licensed journeyman plumber in accordance with division rule; or

(C) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(a)(i)(A) or (B).

(ii) An individual holding a valid Utah license as a journeyman plumber, based on at

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least four years of practical experience as a licensed apprentice under the supervision of a licensed journeyman plumber and four years as a licensed journeyman plumber, in effect immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current master plumber license under this chapter, and satisfies the requirements of this Subsection (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

(iii) An individual holding a valid plumbing contractor's license or residential plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5, 2008:

(A) considered to hold a current master plumber license under this chapter if licensed as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303; and

(B) considered to hold a current residential master plumber license under this chapter if licensed as a residential plumbing contractor and a residential journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303.

(b) A master residential plumber applicant shall produce satisfactory evidence that the applicant:

(i) has been a licensed residential journeyman plumber for at least two years and had two years of supervisory experience as a licensed residential journeyman plumber in accordance with division rule; or

(ii) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(b)(i).

(c) A journeyman plumber applicant shall produce satisfactory evidence of:

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed master plumber or journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) satisfactory evidence of meeting the qualifications determined by the board to be

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equivalent to Subsection (3)(c)(i) or (c)(ii).

(d) A residential journeyman plumber shall produce satisfactory evidence of:

(i) completion of the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) completion of at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

(iii) meeting the qualifications determined by the board to be equivalent to Subsection (3)(d)(i) or (d)(ii).

(e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with the following:

(i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be under the immediate supervision of a licensed master plumber, licensed residential master plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

(ii) a licensed apprentice plumber in the fourth through tenth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period, but if the apprentice does not become a licensed journeyman plumber or licensed residential journeyman plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer applies.

(f) A master electrician applicant shall produce satisfactory evidence that the applicant:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) has four years of practical experience as a journeyman electrician; or

(iv) meets the qualifications determined by the board to be equivalent to Subsection (3)(f)(i), (ii), or (iii).

(g) A master residential electrician applicant shall produce satisfactory evidence that

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the applicant:

(i) has at least two years of practical experience as a residential journeyman electrician;

or

(ii) meets the qualifications determined by the board to be equivalent to this practical experience.

(h) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has at least eight years of full-time experience approved by the division in collaboration with the Electricians Licensing Board; or

(iii) meets the qualifications determined by the board to be equivalent to Subsection (3)(h)(i) or (ii).

(i) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed two years of training in an electrical training program approved by the division;

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician; or

(iii) meets the qualifications determined by the division and applicable board to be equivalent to Subsection (3)(i)(i) or (ii).

(j) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under immediate supervision on a residential project up to three licensed

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apprentice electricians.

(iii) A licensed master or journeyman electrician may have under immediate supervision on nonresidential projects only one licensed apprentice electrician.

(k) An alarm company applicant shall:

(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:

(A) demonstrates 6,000 hours of experience in the alarm company business;

(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and

(C) passes an examination component established by rule by the commission with the concurrence of the director;

(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, provide the names, addresses, dates of birth, social security

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numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) if a trust, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the trustee, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vii) be of good moral character in that officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(ix) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(x) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by rule by the commission with the concurrence of the director;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

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(xi) meet with the division and board.

(l) Each applicant for licensure as an alarm company agent shall:

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

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

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

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

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(m) (i) Each applicant for licensure as an elevator mechanic shall:

(A) provide documentation of experience and education credits of not less than three years work experience in the elevator industry, in construction, maintenance, or service and repair; and

(B) satisfactorily complete a written examination administered by the division established by rule under Section 58-1-203; or

(C) provide certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter and registered with the United States Department of Labor Bureau Apprenticeship and Training or a state apprenticeship council.

(ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, the contractor may:

(I) notify the division of the unavailability of licensed personnel; and

(II) request the division issue a temporary elevator mechanic license to an individual certified by the contractor as having an acceptable combination of documented experience and education to perform the work described in this Subsection (3)(m)(ii)(A).

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(B) (I) The division may issue a temporary elevator mechanic license to an individual certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by the appropriate fee as determined by the department under Section 63J-1-504.

(II) The division shall specify the time period for which the license is valid and may renew the license for an additional time period upon its determination that a shortage of licensed elevator mechanics continues to exist.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.

(5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

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

(6) The Department of Public Safety shall send to the division:

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

(b) the results of the Federal Bureau of Investigation review concerning an applicant in a timely manner after receipt of information from the Federal Bureau of Investigation.

(7) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the

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costs of records reviews under this section.

(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the Federal Bureau of Investigation shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

(9) (a) An application for licensure under this chapter shall be denied if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within [~~one year prior to~~] two years before the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within [~~one year prior to~~] two years before the date of the applicant's application;

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within [~~one year prior to~~] two years before the date of the applicant's application; or

(iv) (A) the applicant includes an individual who was an owner, director, or officer of an unincorporated entity at the time the entity's license under this chapter was revoked; and

(B) the application for licensure is filed within 60 months after the revocation of the unincorporated entity's license.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than [~~one year prior to~~] two years before the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

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(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than [~~one year prior to~~] two years before the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than [~~one year prior to~~] two years before the date of the applicant's application.

(10) (a) (i) A licensee that is an unincorporated entity shall file an ownership status report with the division every 30 days after the day on which the license is issued if the licensee has more than five owners who are individuals who:

(A) own an interest in the contractor that is an unincorporated entity;

(B) own, directly or indirectly, less than an 8% interest, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in the unincorporated entity; and

(C) engage, or will engage, in a construction trade in the state as owners of the contractor described in Subsection (10)(a)(i)(A).

(ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the licensee shall provide the ownership status report with an application for renewal of licensure.

(b) An ownership status report required under this Subsection (10) shall:

(i) specify each addition or deletion of an owner:

(A) for the first ownership status report, after the day on which the unincorporated entity is licensed under this chapter; and

(B) for a subsequent ownership status report, after the day on which the previous ownership status report is filed;

(ii) be in a format prescribed by the division that includes for each owner, regardless of the owner's percentage ownership in the unincorporated entity, the information described in Subsection(1)(e)(v);

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(iii) list the name of:

(A) each officer or manager of the unincorporated entity; and

(B) each other individual involved in the operation, supervision, or management of the unincorporated entity; and

(iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

(c) The division may, at any time, audit an ownership status report under this Subsection (10):

(i) to determine if financial responsibility has been demonstrated or maintained as required under Section 58-55-306; and

(ii) to determine compliance with Subsection 58-55-501(24), (25), or (27) or Subsection 58-55-502(8) or (9).

(11) (a) An unincorporated entity that provides labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah shall file with the division:

(i) before the individual who owns an interest in the unincorporated entity engages in a construction trade in Utah, a current list of the one or more individuals who hold an ownership interest in the unincorporated entity that includes for each individual:

(A) the individual's name, address, birth date, and social security number; and

(B) whether the individual will engage in a construction trade; and

(ii) every 30 days after the day on which the unincorporated entity provides the list described in Subsection (11)(a)(i), an ownership status report containing the information that would be required under Subsection (10) if the unincorporated entity were a licensed contractor.

(b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership status report described in Subsection (11)(a)(ii), an unincorporated entity shall pay a fee set by the division in accordance with Section 63J-1-504.

(12) This chapter may not be interpreted to create or support an express or implied independent contractor relationship between an unincorporated entity described in Subsection (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax withholding.

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(13) A social security number provided under Subsection (1)(e)(v) is a private record under Subsection 63G-2-302(1)(i).

Section 22. Section **58-55-307** is amended to read:

58-55-307. Confidentiality of records and reports.

(1) Credit reports, financial statements, and other information submitted to the division by or at the request and direction of an applicant or licensee for the purpose of supporting a representation of financial responsibility:

(a) constitute protected records under Title 63G, Chapter 2, Government Records Access and Management Act[-]; and

(b) notwithstanding Subsection (1)(a), may be considered by the commission in a public meeting, unless the owner of the information requests that the meeting be closed to the public in accordance with Title 52, Chapter 4, Open and Public Meetings Act.

(2) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the records described in Subsection (1) are not open for public inspection and are not subject to discovery in civil or administrative proceedings.

Section 23. Section **58-60-508** is amended to read:

58-60-508. Substance use disorder counselor supervisor's qualifications --

Functions.

(1) A mental health therapist supervisor of a substance use disorder counselor shall:

(a) be qualified by education or experience to treat substance use disorders;

(b) be currently working in the substance use disorder treatment field;

(c) review substance use disorder counselor assessment procedures and recommendations;

(d) provide substance use disorder diagnosis and other mental health diagnoses in accordance with Subsection 58-60-102(7);

(e) supervise the development of a treatment plan;

(f) approve the treatment plan; and

(g) provide direct supervision for not more than five persons, unless granted an exception in writing from the board and the division.

(2) A supervisor of a certified substance use disorder counselor, certified substance use disorder counselor intern, certified advanced substance use disorder counselor, certified

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advanced substance use disorder counselor intern, or licensed substance use disorder counselor
[may] shall:

(a) be a licensed advanced substance use disorder counselor [~~with~~];

~~[(i) until July 1, 2014, at least two years of experience as a substance use disorder
counselor; or]~~

~~[(ii) beginning on July 1, 2014,]~~

(b) have at least two years of experience as a licensed advanced substance use disorder
counselor;

~~[(b)]~~ (c) be currently working in the substance use disorder field; and

~~[(c)]~~ (d) provide direct supervision for no more than three persons, unless granted an
exception in writing from the board and the division.

Section 24. Section ~~58-63-302~~ is amended to read:

58-63-302. Qualifications for licensure.

(1) Each applicant for licensure as an armored car company or a contract security
company shall:

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

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

(c) have a qualifying agent who:

(i) is a resident of the state and an officer, director, partner, proprietor, or manager of
the applicant;

(ii) passes an examination component established by rule by the division in
collaboration with the board; and

(iii) (A) demonstrates 6,000 hours of compensated experience as a manager,
supervisor, or administrator of an armored car company or a contract security company; or

(B) demonstrates 6,000 hours of supervisory experience acceptable to the division in
collaboration with the board with a federal, United States military, state, county, or municipal
law enforcement agency;

(d) if a corporation, provide:

(i) the names, addresses, dates of birth, and social security numbers of all corporate
officers, directors, and those responsible management personnel employed within the state or
having direct responsibility for managing operations of the applicant within the state; and

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(ii) the names, addresses, dates of birth, and social security numbers, of all shareholders owning 5% or more of the outstanding shares of the corporation, unless waived by the division if the stock is publicly listed and traded;

(e) if a limited liability company, provide:

(i) the names, addresses, dates of birth, and social security numbers of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(ii) the names, addresses, dates of birth, and social security numbers of all individuals owning 5% or more of the equity of the company;

(f) if a partnership, provide the names, addresses, dates of birth, and social security numbers of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(g) if a proprietorship, provide the names, addresses, dates of birth, and social security numbers of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(h) have good moral character in that officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel have not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of a contract security company or an armored car company by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(i) document that none of the applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel:

(i) have been declared by a court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored; and

(ii) currently suffer from habitual drunkenness or from drug addiction or dependence;

(j) file and maintain with the division evidence of:

(i) comprehensive general liability insurance in a form and in amounts established by

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rule by the division in collaboration with the board;

(ii) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law;

(iii) registration with the Division of Corporations and Commercial Code; and

(iv) registration as required by applicable law with the:

(A) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(B) State Tax Commission; and

(C) Internal Revenue Service; and

(k) meet with the division and board if requested by the division or board.

(2) Each applicant for licensure as an armed private security officer shall:

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

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

(c) have good moral character in that the applicant has not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of an armed private security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(d) not be prohibited from possession of a firearm or ammunition under 18 U.S.C. Sec. 922(g);

~~(d)~~ (e) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;

~~(e)~~ (f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

~~(f)~~ (g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;

~~(g)~~ (h) successfully complete firearms training requirements established by rule by the division in collaboration with the board;

~~(h)~~ (i) pass the examination requirement established by rule by the division in collaboration with the board; and

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~~(f)~~ (j) meet with the division and board if requested by the division or the board.

(3) Each applicant for licensure as an unarmed private security officer shall:

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

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

(c) have good moral character in that the applicant has not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of an unarmed private security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

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

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

(f) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;

(g) pass the examination requirement established by rule by the division in collaboration with the board; and

(h) meet with the division and board if requested by the division or board.

(4) Each applicant for licensure as an armored car security officer shall:

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

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

(c) have good moral character in that the applicant has not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of an armored car security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(d) not be prohibited from possession of a firearm or ammunition under 18 U.S.C. Sec. 922(g);

~~(d)~~ (e) not have been declared incompetent by a court of competent jurisdiction by

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reason of mental defect or disease and not been restored;

~~[(e)]~~ (f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

~~[(f)]~~ (g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;

~~[(g)]~~ (h) successfully complete firearms training requirements established by rule by the division in collaboration with the board;

~~[(h)]~~ (i) pass the examination requirements established by rule by the division in collaboration with the board; and

~~[(i)]~~ (j) meet with the division and board if requested by the division or the board.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make a rule establishing when the division shall request a Federal Bureau of Investigation records' review for an applicant.

(6) To determine if an applicant meets the qualifications of Subsections (1)(h), (2)(c), (3)(c), and (4)(c), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure under this chapter and each applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel; and

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

(7) The Department of Public Safety shall send the division:

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

(b) the results of the FBI review concerning an applicant in a timely manner after receipt of information from the FBI.

(8) (a) The division shall charge each applicant a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.

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(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the FBI the costs of records reviews under this chapter.

(9) The division shall use or disseminate the information it obtains from the reviews of criminal history records of the Department of Public Safety and the FBI only to determine if an applicant for licensure under this chapter is qualified for licensure.

Section 25. Section **58-64-304** is amended to read:

58-64-304. Exemptions from licensure.

[The] In addition to the exemptions from licensure [under the provisions of this chapter are limited to those set forth] described in Section 58-1-307[;], a law enforcement officer, as defined under Section 53-13-103, who is not ~~licensed~~; licensed under this chapter may operate a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency if the officer:

(1) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and

(2) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments.

Section 26. Section **58-70a-305** is amended to read:

58-70a-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of practice as a physician assistant, subject to the stated circumstances and limitations, without being licensed under this chapter:

(1) a student enrolled in an accredited physician assistant education program while engaged in activities as a physician assistant:

(a) that are a part of the education program;

(b) that are conducted under the direct supervision of a:

(i) physician associated with the program; or

(ii) licensed physician assistant, at the request of the supervising physician and on a temporary basis, as defined by rule;

(c) for which the program accepts in writing the responsibility for the student; and

(2) a "medical assistant," as defined in Sections 58-67-102 and 58-68-102, who:

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~~[(a) is working under the direct supervision of a physician;]~~

~~[(b)]~~ (a) does not diagnose, advise, independently treat, or prescribe to or on behalf of any person; and

~~[(c)]~~ (b) for whom the supervising physician accepts responsibility.

Section 27. Section **58-74-102** is amended to read:

58-74-102. Definitions.

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

(1) "Board" means the Certified Court Reporters Licensing Board created in Section 58-74-201.

~~[(2) "Certified Shorthand Reporter" means any person licensed under this chapter who is engaged in the practice of shorthand reporting.]~~

~~[(3)]~~ (2) "Certified court reporter" means any person who engages in the practice of court reporting who is:

(a) a shorthand reporter certified by the National Court Reporters Association; or

(b) a voice reporter certified by the National Verbatim Reporters Association.

~~[(4)]~~ (3) "Certified voice reporter" means any person licensed under this chapter who engages in the practice of voice reporting.

~~[(5)]~~ (4) "Official court reporter" means a certified shorthand reporter employed by the courts.

~~[(6)]~~ (5) "Official court transcriber" means a person certified in accordance with rules of the Judicial Council as competent to transcribe into written form an audio or video recording of court proceedings.

~~[(7)]~~ (6) "Practice of court reporting" means the making of a verbatim record of any trial, legislative public hearing, state agency public hearing, deposition, examination before trial, hearing or proceeding before any grand jury, referee, board, commission, master or arbitrator, or other sworn testimony given under oath.

~~[(8) "Practice of shorthand reporting" means the practice of making a verbatim record, using symbols or abbreviations.]~~

~~[(9)]~~ (7) "Practice of voice reporting" means the practice of making a verbatim record, using voice writing.

~~[(10)]~~ (8) "Voice writing" means the making of a verbatim record of the spoken word

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by means of repeating the words of the speaker into a device capable of either digital translation into English text or creation of a tape or digital recording.

~~[(11)]~~ (9) "Unlawful conduct" ~~[is-as]~~ means the same as that term is defined in Sections 58-1-501 and 58-74-501.

~~[(12)]~~ (10) "Unprofessional conduct" ~~[is-as]~~ means the same as that term is defined in Sections 58-1-501 and 58-74-502 and as may be further defined by rule.

Section 28. Section **58-77-601** is amended to read:

58-77-601. Standards of practice.

(1) (a) Prior to providing any services, a licensed direct-entry midwife must obtain an informed consent from a client.

(b) The consent must include:

(i) the name and license number of the direct-entry midwife;

(ii) the client's name, address, telephone number, and primary care provider, if the client has one;

(iii) the fact, if true, that the licensed direct-entry midwife is not a certified nurse midwife or a physician;

(iv) a description of the licensed direct-entry midwife's education, training, continuing education, and experience in midwifery;

(v) a description of the licensed direct-entry midwife's peer review process;

(vi) the licensed direct-entry midwife's philosophy of practice;

(vii) a promise to provide the client, upon request, separate documents describing the rules governing licensed direct-entry midwifery practice, including a list of conditions indicating the need for consultation, collaboration, referral, transfer or mandatory transfer, and the licensed direct-entry midwife's personal written practice guidelines;

(viii) a medical back-up or transfer plan;

(ix) a description of the services provided to the client by the licensed direct-entry midwife;

(x) the licensed direct-entry midwife's current legal status;

(xi) the availability of a grievance process;

(xii) client and licensed direct-entry midwife signatures and the date of signing; and

(xiii) whether the licensed direct-entry midwife is covered by a professional liability

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insurance policy.

(2) A licensed direct-entry midwife shall:

(a) (i) limit the licensed direct-entry midwife's practice to a normal pregnancy, labor, postpartum, newborn and interconceptual care, which for purposes of this section means a normal labor:

(A) that is not pharmacologically induced;

(B) that is low risk at the start of labor;

(C) that remains low risk through out the course of labor and delivery;

(D) in which the infant is born spontaneously in the vertex position between 37 and 43 completed weeks of pregnancy; and

(E) except as provided in Subsection (2)(a)(ii), in which after delivery, the mother and infant remain low risk; and

(ii) the limitation of Subsection (2)(a)(i) does not prohibit a licensed direct-entry midwife from delivering an infant when there is:

(A) intrauterine fetal demise; or

(B) a fetal anomaly incompatible with life; and

(b) appropriately recommend and facilitate consultation with, collaboration with, referral to, or transfer or mandatory transfer of care to a licensed health care professional when the circumstances require that action in accordance with this section and standards established by division rule.

(3) If after a client has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer and the client chooses to decline, then the licensed direct-entry midwife shall:

(a) terminate care in accordance with procedures established by division rule; or

(b) continue to provide care for the client if the client signs a waiver of medical consultation, collaboration, referral, or transfer.

(4) If after a client has been informed that she has or may have a condition indicating the need for mandatory transfer, the licensed direct-entry midwife shall, in accordance with procedures established by division rule, terminate the care or initiate transfer by:

(a) calling 911 and reporting the need for immediate transfer;

(b) immediately transporting the client by private vehicle to the receiving provider; or

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(c) contacting the physician to whom the client will be transferred and following that physician's orders.

(5) The standards for consultation and transfer are the minimum standards that a licensed direct-entry midwife must follow. A licensed direct-entry midwife shall initiate consultation, collaboration, referral, or transfer of a patient sooner than required by administrative rule if in the opinion and experience of the licensed direct-entry midwife, the condition of the client or infant warrant a consultation, collaboration, referral, or transfer.

~~[(6) For the period from 2006 through 2011, a licensed direct-entry midwife must submit outcome data to the Midwives' Alliance of North America's Division of Research on the form and in the manner prescribed by rule.]~~

~~[(7)]~~ (6) This chapter does not mandate health insurance coverage for midwifery services.

Section 29. Section **58-81-102** is amended to read:

58-81-102. Definitions.

For purposes of this chapter:

(1) "Board" means the state licensing board created for each of the health care practitioners included in Subsection (2).

(2) "Health care practitioner" includes:

(a) a podiatrist licensed under Chapter 5a, Podiatric Physician Licensing Act;

(b) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act;

(c) a nurse or advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;

(d) a recreational therapist licensed under Chapter 40, Recreational Therapy Practice Act;

(e) an occupational therapist licensed under Chapter 42a, Occupational Therapy Practice Act;

(f) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

(g) a mental health professional licensed under Chapter 60, Mental Health Professional Practice Act;

(h) a psychologist licensed under Chapter 61, Psychologist Licensing Act;

~~[(h)]~~ (i) a physician licensed under Chapter 67, Utah Medical Practice Act;

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~~(j)~~ (j) an osteopath licensed under Chapter 68, Utah Osteopathic Medical Practice Act;

~~(k)~~ (k) a dentist or dental hygienist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;

~~(l)~~ (l) a physician assistant licensed under Chapter 70a, Physician Assistant Act;

~~(m)~~ (m) a pharmacist licensed under Chapter 17b, Pharmacy Practice Act; or

~~(n)~~ (n) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act.

(3) "Qualified location" means:

(a) a clinic, hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services; and

(b) is a location approved by the division.

(4) "Remuneration or compensation" ~~is as~~ means the same as that term is defined in Section 58-13-3.

(5) "Supervising professional" means a health care practitioner:

(a) who has an active license in the state in good standing;

(b) with a scope of practice that is appropriate for supervising the applicant as determined by the division and board; and

(c) who is practicing at the qualified location.

(6) "Supervision" means:

(a) the level of supervision required for:

(i) a social service worker in Chapter 60, Mental Health Professional Practice Act;

(ii) a dental hygienist in Chapter 69, Dentist and Dental Hygienist Practice Act;

(iii) a recreational therapist technician in Chapter 40, Recreational Therapy Practice Act; and

(iv) an occupational technician assistant in Chapter 42a, Occupational Therapy Practice Act; and

(b) for the health care practitioners listed in Subsections (2)(a) through (m) and not included in Subsection (5)(a):

(i) entering into a delegation of service agreement with a supervising professional in accordance with Subsection 58-81-103(2);

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(ii) having the ability to contact the supervising professional during the time the volunteer is providing volunteer services; and

(iii) for every 40 hours of volunteer service hours, meeting with the supervising professional.

(7) "Volunteer" means the individual health care practitioner:

(a) will devote the health care practitioner's practice exclusively to providing care to the needy and indigent in the state:

(i) within:

(A) the practitioner's scope of practice; and

(B) the delegation of service agreement between the volunteer and the supervising professional; and

(ii) at a qualified location;

(b) will agree to donate professional services in a qualified location; and

(c) will not receive remuneration or compensation for the health care practitioner's services.

†

Legislative Review Note

† Section 30. Coordinating S.B. 136 with H.B. 185 -- Substantive and technical amendments.

If this S.B. 136 and H.B. 185, Deception Detection Examiners Licensing Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, modify Section 58-64-304 to read:

"[The] In addition to the exemptions from licensure [under the provisions of this chapter are limited to those set forth] described in Section 58-1-307[-], a law enforcement officer, as defined under Section 53-13-103, who is not licensed under this chapter, may operate a voice stress analyzer or software application designed for detecting deception in the course of the officer's employment with a federal, state, or local law enforcement agency, if the

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officer:

(1) has completed the manufacturer's training course and is certified by the manufacturer to operate the voice stress analyzer or software application designed for detecting deception; and

(2) is operating the voice stress analyzer or software application designed for detecting deception in accordance with Section 58-64-601, regarding deception detection instruments."