

OCCUPATIONAL FREEDOM AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Norman K. Thurston

LONG TITLE

General Description:

This bill directs the Office of the Legislative Auditor General to assist the Occupational and Professional Licensing Review Committee in performing the statutorily required 10-year review of lawful occupations.

Highlighted Provisions:

This bill:

- ▶ requires the Office of the Legislative Auditor General to coordinate and assist the Occupational and Professional Licensure Review Committee in reviewing state licensed lawful professions;
- ▶ directs the Division of Occupational and Professional Licensing, the Department of Insurance, the Department of Public Safety, and the Division of Real Estate to collect a 50 cent surcharge on certain licensing fees to fund the work of the Office of the Legislative Auditor General in assisting the Occupational and Professional Licensing Review Committee; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 [36-23-109](#), as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307

30 [53-9-111](#), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 18

31 [53-11-115](#), as last amended by Laws of Utah 2018, Chapter 417

32 [61-2f-105](#), as last amended by Laws of Utah 2011, Chapter 289

33 ENACTS:

34 [31A-1-111](#), Utah Code Annotated 1953

35 [36-12-15.2](#), Utah Code Annotated 1953

36 [58-1-112](#), Utah Code Annotated 1953

37 [58-1-113](#), Utah Code Annotated 1953



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

40 Section 1. Section [31A-1-111](#) is enacted to read:

41 **[31A-1-111](#). Surcharge fees for initial licenses, license renewals, and license**
42 **reinstatements.**

43 (1) In addition to any other fees authorized by this chapter or by the department in
44 accordance with Section [63J-1-504](#), the department shall require each applicant for an initial
45 license, renewal of a license, or reinstatement of a license under this part for which the cost is
46 \$50 or higher to pay a 50 cent surcharge fee.

47 (2) Funds collected under Subsection (1) shall be placed in the Occupational and
48 Professional Licensing Review Restricted Account, created in Section [58-1-113](#).

49 Section 2. Section [36-12-15.2](#) is enacted to read:

50 **[36-12-15.2](#). Assistance to the Occupational and Professional Licensure Review**
51 **Committee.**

52 The Office of the Legislative Auditor General shall:

53 (1) each year, coordinate with the Occupational and Professional Licensure Review
54 Committee created in Section [36-23-102](#), to identify licensed lawful occupations that are due
55 for review under the requirements of Section [36-23-109](#);

56 (2) subject to prioritization by the audit subcommittee of the Legislative Management
57 Committee as described in Subsection [36-12-8\(2\)\(d\)](#), perform a review of lawful occupations
58 identified in Subsection (1);

59 (3) conduct the review required in Subsection (1) in accordance with established
60 policies, procedures, methods, and standards of audit work of the Office of the Legislative
61 Auditor General;

62 (4) submit a report by July 1 of each year to the Occupational and Professional
63 Licensure Review Committee created in Section 36-23-102 summarizing the findings of the
64 review in Subsection (1); and

65 (5) provide additional assistance to the Occupational and Professional Licensure
66 Review Committee as needed to fulfill the requirements of Section 36-23-109.

67 Section 3. Section **36-23-109** is amended to read:

68 **36-23-109. Review of state regulation of occupations.**

69 (1) As part of the annual report described in Section **36-23-106**, the committee shall
70 study and make recommendations regarding potentially less restrictive alternatives to licensing
71 for the regulation of lawful occupations, including registration, certification, or exemption, if
72 appropriate, that would avoid unnecessary regulation while still protecting the health and safety
73 of the public.

74 (2) The committee shall, with the assistance of the Office of the Legislative Auditor
75 General as required by Section 36-12-15.2, study and make recommendations regarding lawful
76 occupations that require a license in the state so that each licensed lawful occupation is
77 reviewed every 10 years.

78 Section 4. Section **53-9-111** is amended to read:

79 **53-9-111. License and registration fees -- Deposit into General Fund.**

80 (1) Fees for individual and agency licensure and renewal shall be in accordance with
81 Section **63J-1-504**.

82 (2) (a) The bureau may renew a license granted under this chapter upon receipt of:

83 (i) a renewal application on forms as prescribed by the bureau; and

84 (ii) the fees prescribed in Subsection (1).

85 (b) (i) The renewal of a license requires the filing of all certificates of insurance or
86 proof of surety bond as required by this chapter.

87 (ii) Renewal of a license may not be granted more than 180 days after expiration.

88 (c) A licensee may not engage in activity subject to this chapter during the period
89 between the date of expiration of the license and the renewal of the license.

90 (3) (a) The bureau shall renew a suspended license if:

91 (i) the period of suspension has been completed;

92 (ii) the bureau has received a renewal application from the applicant on forms
93 prescribed by the bureau; and

94 (iii) the applicant has:

95 (A) filed all certificates of insurance or proof of surety bond as required by this
96 chapter; and

97 (B) paid the fees required by this section for renewal, including a delinquency fee if the
98 application is not received by the bureau within 30 days of the termination of the suspension.

99 (b) Renewal of the license does not entitle the licensee, while the license remains
100 suspended and until it is reinstated, to engage in activity regulated by this chapter, or in other
101 activity or conduct in violation of the order or judgment by which the license was suspended.

102 (4) The bureau may not reinstate a revoked license or accept an application for a
103 license from a person whose license has been revoked for at least one year from the date of
104 revocation.

105 (5) In addition to any other fees authorized by this chapter or by the bureau in
106 accordance with Section 63J-1-504, the department shall require each applicant for an initial
107 license, renewal of a license, or reinstatement of a license under this chapter for which the cost
108 is \$50 or higher to pay a 50 cent surcharge fee.

109 (6) Funds collected under Subsection (5) shall be placed in the Occupational and
110 Professional Licensing Review Restricted Account, created in Section 58-1-113.

111 [~~5~~] (7) All fees, except the fingerprint processing fee and surcharge fee, collected by
112 the bureau under this section shall be deposited [in] into the General Fund.

113 Section 5. Section 53-11-115 is amended to read:

114 **53-11-115. License fees -- Deposit into General Fund -- Surcharge fees --**
115 **Occupational and Professional Licensing Review Restricted Account.**

116 (1) Fees for individual and agency licensure, registration, and renewal shall be set in
117 accordance with Section 63J-1-504.

118 (2) (a) The bureau may renew a license granted under this chapter upon receipt of an
119 application on forms as prescribed by the board and upon receipt of the applicable fees if the
120 licensee's application meets all the requirements for renewal.

121 (b) If the bureau determines the license renewal application does not meet all the
122 requirements for renewal, the bureau shall submit the renewal application to the board for
123 review and action.

124 (c) A license may not be renewed more than 90 days after its expiration.

125 (d) A licensee may not engage in any activity subject to this chapter during any period
126 between the date of expiration of the license and the renewal of the license.

127 (3) (a) The board may reinstate a suspended license upon completion of the term of
128 suspension.

129 (b) Renewal of the license does not entitle the licensee, while the license remains
130 suspended and until it is reinstated, to engage in any activity regulated by this chapter, or in any
131 other activity or conduct in violation of the order or judgment by which the license was
132 suspended.

133 (4) The board may not reinstate a revoked license or accept an application for a license
134 from a person whose license has been revoked for at least one year after the date of revocation.

135 (5) In addition to any other fees authorized by this chapter or by the department in
136 accordance with Section 63J-1-504, the department shall require each applicant for an initial
137 license, renewal of a license, or reinstatement of a license under this chapter for which the cost
138 is \$50 or higher to pay a 50 cent surcharge fee.

139 (6) Funds collected under Subsection (5) shall be placed in the Occupational and
140 Professional Licensing Review Restricted Account, created in Section 58-1-113.

141 [~~5~~] (7) All fees, except the fingerprint processing fee and surcharge fee, collected by
142 the department under this section shall be deposited [in] into the General Fund.

143 Section 6. Section **58-1-112** is enacted to read:

144 **58-1-112. Surcharge fees for initial licenses, license renewals, and license**
145 **reinstatements.**

146 (1) In addition to any other fees authorized by this chapter or by the division in
147 accordance with Section 63J-1-504, the division shall require each applicant for an initial
148 license, renewal of a license, or reinstatement of a license under this chapter for which the cost
149 is \$50 or higher to pay a 50 cent surcharge fee.

150 (2) Funds collected under Subsection (1) shall be placed in the Occupational and
151 Professional Licensing Review Restricted Account, created in Section 58-1-113.

152 Section 7. Section **58-1-113** is enacted to read:

153 **58-1-113. Occupational and Professional Licensing Review Restricted Account.**

154 (1) There is created in the General Fund a restricted account known as the
155 Occupational and Professional Licensing Review Restricted Account.

156 (2) The Occupational and Professional Licensing Review Restricted Account shall
157 consist of the surcharge fees imposed by the following:

158 (a) the Division of Occupational and Professional Licensing in accordance with
159 Section [58-1-112](#);

160 (b) the Department of Insurance in accordance with Section [31A-35-408](#);

161 (c) the Department of Public Safety in accordance with Sections [53-9-111](#) and
162 [53-11-115](#); and

163 (d) the Division of Real Estate in accordance with Subsections [61-2f-105\(5\)](#) and [\(6\)](#).

164 (3) Subject to appropriation by the Legislature, the Office of the Legislative Auditor
165 General shall use the money deposited into the Occupational and Professional Licensing
166 Review Restricted Account to fulfill the requirements of Section [36-12-15.2](#).

167 Section 8. Section **61-2f-105** is amended to read:

168 **61-2f-105. Fees and surcharges.**

169 (1) In addition to when expressly authorized in another provision of this chapter, the
170 division may charge and collect reasonable fees determined by the commission with the
171 concurrence of the division under Section [63J-1-504](#) to cover the costs for:

172 (a) issuing a new or duplicate license;

173 (b) registering an entity or branch office;

174 (c) certifying a real estate school, course, or instructor;

175 (d) providing a history of a license, registration, or certification;

176 (e) producing a certified copy of an official document, order, or other paper or
177 transcript; and

178 (f) other duties required by this chapter.

179 (2) Notwithstanding Section [13-1-2](#), a fee collected under Subsection (1)(c) shall be
180 deposited [in] into the Real Estate Education, Research, and Recovery Fund.

181 (3) If a person pays a fee or costs to the division with a negotiable instrument or other
182 payment method that is not honored for payment:

- 183 (a) the transaction for which the payment is submitted is voidable by the division;
184 (b) the division may reverse the transaction if payment of the applicable fee or costs is
185 not received in full; and
186 (c) the person's license, certification, or registration is automatically suspended:
187 (i) beginning the day on which the payment is due; and
188 (ii) ending the day on which payment is made in full.
189 (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that
190 might otherwise be imposed or charged by the state or any of its political subdivisions upon, or
191 as a condition of, the privilege of conducting the business regulated by this chapter, except that
192 a political subdivision within the state may charge a business license fee on a principal broker
193 if the principal broker maintains a place of business within the jurisdiction of the political
194 subdivision.
195 (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes
196 imposed under Title 59, Revenue and Taxation.
197 (5) In addition to any other fees authorized by this chapter or by the division in
198 accordance with Section 63J-1-504, the division shall require each applicant for an initial
199 license, renewal of a license, or reinstatement of a license under this chapter for which the cost
200 is \$50 or higher to pay a 50 cent surcharge fee.
201 (6) Funds collected under Subsection (5) shall be placed in the Occupational and
202 Professional Licensing Review Restricted Account, created in Section 58-1-113.