

## SB0043S07 compared with SB0043S06

~~text~~ shows text that was in SB0043S06 but was deleted in SB0043S07.

text shows text that was not in SB0043S06 but was inserted into SB0043S07.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Joel Ferry proposes the following substitute bill:

### OCCUPATIONAL AND PROFESSIONAL LICENSING

#### MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Joel Ferry

---

---

#### LONG TITLE

##### General Description:

This bill modifies provisions related to licensed professions.

##### Highlighted Provisions:

This bill:

- ▶ changes the name of the Division of Occupational and Professional Licensing (division);
- ▶ defines terms;
- ▶ amends defined terms;
- ▶ modifies licensing board duties;
- ▶ amends license application requirements;

## SB0043S07 compared with SB0043S06

- ▶ modifies the division's authority to grant a license by endorsement;
- ▶ removes good moral character provisions for certain licensed professions;
- ▶ amends the definition of "practice of environmental health science";
- ▶ modifies provisions related to speech-language pathology and audiology;
- ▶ amends provisions related to unprofessional conduct for certain professions;
- ▶ modifies the division's citation authority for certain unprofessional conduct for the construction trades;
- ▶ modifies provisions related to armored car company and contract security company license qualifications;
- ▶ amends provisions related to chiropractic physician license qualifications;
- ▶ defines as unprofessional conduct the following actions by a chiropractic physician:
  - making a false entry under certain circumstances;
  - sharing professional fees with a person who is not licensed; or
  - paying a person for a patient referral;
- ▶ removes the sunset date for provisions relating to online curriculum for a licensed cosmetology related program;
- ▶ extends the sunset date for the Recreational Therapy Practice Act;
- ~~{ —————▶ prohibits a health care provider from purchasing or acquiring a debt or lien under certain circumstances;~~
- ~~—————▶ prohibits an individual from having a financial interest in a health care provider that purchases or acquires a debt or a lien under certain circumstances;~~
- ‡ ▶ prohibits a kickback or bribe for a referral for a good or service that relates to an insurance claim or claim for damages;
- ▶ creates a criminal penalty for certain prohibited activities; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides revisor instructions.

This bill provides a coordination clause.

### Utah Code Sections Affected:

## **SB0043S07 compared with SB0043S06**

### AMENDS:

- 13-1-2**, as last amended by Laws of Utah 2021, Chapter 345
- 13-23-2**, as last amended by Laws of Utah 2021, Chapter 266
- 15A-1-102**, as last amended by Laws of Utah 2020, Chapter 43
- 15A-3-402**, as last amended by Laws of Utah 2020, Chapter 441
- 17-21-18.5**, as last amended by Laws of Utah 2019, Chapter 302
- 17-22-30**, as last amended by Laws of Utah 2021, Chapter 148
- 17-23-17**, as last amended by Laws of Utah 2016, Chapter 303
- 26-2-2**, as last amended by Laws of Utah 2020, Chapter 251
- 26-4-10.5**, as enacted by Laws of Utah 2016, Chapter 104
- 26-6-27**, as last amended by Laws of Utah 2021, Chapter 345
- 26-7-13**, as enacted by Laws of Utah 2020, Chapter 201
- 26-8a-310**, as last amended by Laws of Utah 2021, Chapters 237 and 262
- 26-15-3**, as last amended by Laws of Utah 2011, Chapter 14
- 26-21-22**, as enacted by Laws of Utah 1998, Chapter 288
- 26-21-26**, as last amended by Laws of Utah 2016, Chapter 99
- 26-21-204**, as last amended by Laws of Utah 2021, Chapter 262
- 26-49-205**, as enacted by Laws of Utah 2008, Chapter 242
- 26-55-105**, as enacted by Laws of Utah 2016, Chapter 208 and last amended by  
Coordination Clause, Laws of Utah 2016, Chapter 202
- 26-55-108**, as last amended by Laws of Utah 2018, Chapter 38
- 26-60-104**, as enacted by Laws of Utah 2017, Chapter 241
- 26-61-202**, as last amended by Laws of Utah 2020, Chapter 12
- 26-61a-103**, as last amended by Laws of Utah 2021, Chapters 17, 337, 344, and 350
- 26-61a-106**, as last amended by Laws of Utah 2021, Chapters 337 and 350
- 26-61a-303**, as last amended by Laws of Utah 2021, Chapters 84 and 345
- 26-61a-401**, as last amended by Laws of Utah 2021, Chapter 337
- 26-61a-403**, as last amended by Laws of Utah 2021, Chapters 337 and 350
- 26-61a-501**, as last amended by Laws of Utah 2021, Chapters 337 and 350
- 26-61a-503**, as last amended by Laws of Utah 2021, Chapter 337
- 26-61a-506**, as last amended by Laws of Utah 2020, Chapter 12

## **SB0043S07 compared with SB0043S06**

**26-61a-605**, as last amended by Laws of Utah 2021, Chapter 350  
**26-61a-606**, as last amended by Laws of Utah 2021, Chapter 350  
**26-64-102**, as enacted by Laws of Utah 2018, Chapter 295  
**26A-1-113**, as last amended by Laws of Utah 2011, Chapter 14  
**26A-1-114**, as last amended by Laws of Utah 2021, Chapter 437  
**26A-1-126**, as last amended by Laws of Utah 2013, Chapter 44  
**31A-22-642**, as last amended by Laws of Utah 2019, Chapter 332  
**32B-4-305**, as last amended by Laws of Utah 2021, Chapter 260  
**34-38-13**, as last amended by Laws of Utah 2004, Chapter 152  
**35A-6-105**, as last amended by Laws of Utah 2021, Chapters 282 and 301  
**36-23-102**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307  
**36-23-107**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307  
**38-1a-102**, as last amended by Laws of Utah 2019, Chapter 250  
**38-1b-102**, as last amended by Laws of Utah 2016, Chapter 350  
**38-11-102**, as last amended by Laws of Utah 2020, Chapters 154 and 339  
**38-11-103**, as last amended by Laws of Utah 1995, Chapter 172  
**41-6a-502**, as last amended by Laws of Utah 2020, Chapter 177  
**41-6a-502.5**, as last amended by Laws of Utah 2021, Chapter 79  
**53-2a-1205**, as enacted by Laws of Utah 2014, Chapter 376  
**53-10-114**, as enacted by Laws of Utah 1998, Chapter 101  
**53B-24-304**, as renumbered and amended by Laws of Utah 2013, Chapter 28  
**53F-2-305**, as last amended by Laws of Utah 2020, Chapters 308 and 408  
**53F-2-405**, as last amended by Laws of Utah 2020, Chapters 308 and 408  
**58-1-102**, as last amended by Laws of Utah 2016, Chapter 127  
**58-1-103**, as renumbered and amended by Laws of Utah 1993, Chapter 297  
**58-1-202**, as last amended by Laws of Utah 2018, Chapter 129  
**58-1-301**, as last amended by Laws of Utah 2019, Chapter 133  
**58-1-302**, as last amended by Laws of Utah 2020, Chapter 339  
**58-3a-302**, as last amended by Laws of Utah 2020, Chapter 339  
**58-9-302**, as last amended by Laws of Utah 2018, Chapter 326  
**58-16a-302**, as last amended by Laws of Utah 2020, Chapter 339

## **SB0043S07 compared with SB0043S06**

**58-17b-504**, as last amended by Laws of Utah 2020, Chapter 339  
**58-20b-102**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1  
**58-22-102**, as last amended by Laws of Utah 2020, Chapter 339  
**58-28-304**, as last amended by Laws of Utah 2020, Chapter 339  
**58-28-503**, as last amended by Laws of Utah 2018, Chapter 318  
**58-31b-303**, as last amended by Laws of Utah 2006, Chapter 291  
**58-31b-503**, as last amended by Laws of Utah 2020, Chapter 339  
**58-37-2**, as last amended by Laws of Utah 2020, Chapter 12  
**58-37-6**, as last amended by Laws of Utah 2021, Chapters 23, 165, and 262  
**58-37-8**, as last amended by Laws of Utah 2021, Chapter 236  
**58-37c-5**, as repealed and reenacted by Laws of Utah 1992, Chapter 155  
**58-37c-6**, as last amended by Laws of Utah 2008, Chapter 382  
**58-37c-21**, as last amended by Laws of Utah 1999, Chapter 21  
**58-37d-9**, as last amended by Laws of Utah 1999, Chapter 21  
**58-38a-201**, as last amended by Laws of Utah 2020, Chapter 26  
**58-41-4**, as last amended by Laws of Utah 2019, Chapter 349  
**58-44a-302**, as last amended by Laws of Utah 2016, Chapter 238  
**58-44a-402**, as last amended by Laws of Utah 2018, Chapter 318  
**58-55-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 3  
**58-55-302**, as last amended by Laws of Utah 2020, Chapter 339  
**58-55-502**, as last amended by Laws of Utah 2011, Chapters 170 and 413  
**58-55-503**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4  
**58-56-2**, as enacted by Laws of Utah 1989, Chapter 269  
**58-57-14**, as last amended by Laws of Utah 2008, Chapter 382  
**58-61-704**, as last amended by Laws of Utah 2020, Chapter 339  
**58-63-102**, as last amended by Laws of Utah 2017, Chapter 197  
**58-63-302**, as last amended by Laws of Utah 2020, Chapter 339  
**58-67-503**, as last amended by Laws of Utah 2020, Chapter 339  
**58-68-503**, as last amended by Laws of Utah 2020, Chapter 339  
**58-71-402**, as last amended by Laws of Utah 2008, Chapter 382  
**58-73-302**, as last amended by Laws of Utah 2020, Chapter 339

## **SB0043S07 compared with SB0043S06**

**58-73-501**, as last amended by Laws of Utah 1998, Chapter 26  
**58-83-102**, as enacted by Laws of Utah 2010, Chapter 180  
**58-83-302**, as enacted by Laws of Utah 2010, Chapter 180  
**58-83-401**, as last amended by Laws of Utah 2011, Chapter 367  
**58-83-502**, as last amended by Laws of Utah 2020, Chapter 25  
**58-87-103**, as renumbered and amended by Laws of Utah 2017, Chapter 225  
**59-10-1111**, as enacted by Laws of Utah 2016, Chapter 407  
**62A-3-202**, as last amended by Laws of Utah 2018, Chapter 60  
**62A-3-305**, as last amended by Laws of Utah 2021, Chapter 419  
**62A-3-311.1**, as last amended by Laws of Utah 2017, Chapter 195  
**62A-3-312**, as last amended by Laws of Utah 2017, Chapter 176  
**62A-4a-411**, as last amended by Laws of Utah 2021, Chapter 419  
**62A-4a-603**, as last amended by Laws of Utah 2020, Chapter 250  
**62A-15-103**, as last amended by Laws of Utah 2021, Chapters 231 and 277  
**63G-2-305**, as last amended by Laws of Utah 2021, Chapters 148, 179, 231, 353, 373,  
and 382  
**63I-1-258**, as last amended by Laws of Utah 2021, Chapter 32  
**63J-1-602.1**, as last amended by Laws of Utah 2021, Chapters 280, 382, 401, and 438  
**63N-1b-301**, as renumbered and amended by Laws of Utah 2021, Chapter 282  
**78B-3-403**, as last amended by Laws of Utah 2019, Chapter 349

### ENACTS:

**76-10-3201**, Utah Code Annotated 1953

~~{ **76-10-3202**, Utah Code Annotated 1953~~

### RENUMBERS AND AMENDS:

**58-15-101**, (Renumbered from 58-15-2, as last amended by Laws of Utah 2016,  
Chapter 238)

**58-15-201**, (Renumbered from 58-15-3, as last amended by Laws of Utah 2011,  
Chapter 366)

**58-15-301**, (Renumbered from 58-15-4, as last amended by Laws of Utah 2009,  
Chapter 183)

**58-15-302**, (Renumbered from 58-15-4.5, as enacted by Laws of Utah 1993, Chapter

## SB0043S07 compared with SB0043S06

297)

**58-15-303**, (Renumbered from 58-15-11, as last amended by Laws of Utah 2020, Chapter 339)

**58-15-401**, (Renumbered from 58-15-12, as enacted by Laws of Utah 1993, Chapter 297)

**58-15-501**, (Renumbered from 58-15-10, as repealed and reenacted by Laws of Utah 1993, Chapter 297)

### REPEALS:

**58-1-101**, as renumbered and amended by Laws of Utah 1993, Chapter 297

**58-5a-305**, as last amended by Laws of Utah 1996, Chapter 232

**58-15-1**, as enacted by Laws of Utah 1985, Chapter 49

### Utah Code Sections Affected by Coordination Clause:

**26-69-405**, Utah Code Annotated 1953

---

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

Section 1. Section **13-1-2** is amended to read:

**13-1-2. Creation and functions of department -- Divisions created -- Fees --**

#### **Commerce Service Account.**

(1) (a) There is created the Department of Commerce.

(b) The department shall:

(i) execute and administer state laws regulating business activities and occupations affecting the public interest; and

(ii) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(A) under this title;

(B) by the department; or

(C) by an agency or division within the department.

(2) Within the department the following divisions are created:

(a) the Division of [~~Occupational and~~] Professional Licensing;

(b) the Division of Real Estate;

## SB0043S07 compared with SB0043S06

- (c) the Division of Securities;
- (d) the Division of Public Utilities;
- (e) the Division of Consumer Protection; and
- (f) the Division of Corporations and Commercial Code.

(3) (a) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Section 63J-1-504.

(b) The department shall submit each fee established in this manner to the Legislature for [its] the Legislature's approval as part of the department's annual appropriations request.

(c) (i) There is created a restricted account within the General Fund known as the "Commerce Service Account."

(ii) The restricted account created in Subsection (3)(c)(i) consists of fees collected by each division and by the department.

(iii) The undesignated account balance may not exceed \$1,000,000 at the end of each fiscal year.

(iv) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any undesignated funds in the account that exceed the amount necessary to maintain the undesignated account balance at \$1,000,000.

(d) The department may not charge or collect a fee or expend money from the restricted account without approval by the Legislature.

(4) (a) As used in this Subsection (4):

(i) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other entity or association used to carry on a business for profit.

(ii) "Fund" means the Single Sign-On Expendable Special Revenue Fund, created in Subsection (4)(c).

(iii) "Renewal fee" means a fee that the Division of Corporations and Commercial Code, established in Section 13-1a-1, is authorized or required to charge a business entity in connection with the business entity's periodic renewal of [its] the business entity's status with the Division of Corporations and Commercial Code.

(iv) "Single sign-on fee" means a fee described in Subsection (4)(b) to pay for the



## SB0043S07 compared with SB0043S06

establishment and maintenance of the single sign-on business portal.

(v) "Single sign-on business portal" means the same as that term is defined in Section 63A-16-802.

(b) (i) The schedule of fees adopted by the department under Subsection (3) shall include a single sign-on fee, not to exceed \$5, as part of a renewal fee.

(ii) The department shall deposit all single sign-on fee revenue into the fund.

(c) (i) There is created the Single Sign-On Expendable Special Revenue Fund.

(ii) The fund consists of:

(A) money that the department collects from the single sign-on fee; and

(B) money that the Legislature appropriates to the fund.

(d) The department shall use the money in the fund to pay for costs:

(i) to design, create, operate, and maintain the single sign-on business portal; and

(ii) incurred by:

(A) the Department of Technology Services, created in Section 63A-16-103; or

(B) a third-party vendor working under a contract with the Department of Technology Services.

(e) The department shall report on fund revenues and expenditures to the Public Utilities, Energy, and Technology Interim Committee of the Legislature annually and at any other time requested by the committee.

Section 2. Section **13-23-2** is amended to read:

### **13-23-2. Definitions.**

As used in this chapter:

(1) "Business enterprise" means a sole proprietorship, partnership, association, joint venture, corporation, limited liability company, or other entity used in carrying on a business.

(2) "Consumer" means a purchaser of health spa services for consideration.

(3) "Consumer's primary location" means the health spa facility that a health spa designates in a contract for health spa services as the health spa facility the consumer will primarily use for health spa services.

(4) "Division" means the Division of Consumer Protection.

(5) (a) "Health spa" means a business enterprise that provides access to a facility:

(i) for a charge or a fee; and

## SB0043S07 compared with SB0043S06

(ii) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.

(b) "Health spa" does not include:

(i) a licensed physician who operates a facility at which the physician engages in the practice of medicine;

(ii) a hospital, intermediate care facility, or skilled nursing care facility;

(iii) a public or private school, college, or university;

(iv) the state or a political subdivision of the state;

(v) the United States or a political subdivision of the United States;

(vi) a person offering instruction if the person does not:

(A) utilize an employee or independent contractor; or

(B) grant a consumer the use of a facility containing exercise equipment;

(vii) a business enterprise, the primary operation of which is to teach self-defense or a martial art, including kickboxing, judo, or karate;

(viii) a business enterprise, the primary operation of which is to teach or allow an individual to develop a specific skill rather than develop or preserve physical fitness, including gymnastics, tennis, rock climbing, or a winter sport;

(ix) a business enterprise, the primary operation of which is to teach or allow an individual to practice yoga or Pilates;

(x) a private employer who owns and operates a facility exclusively for the benefit of the employer's employees, retirees, or family members, if the operation of the facility:

(A) is only incidental to the overall function and purpose of the employer's business;

and

(B) is offered on a nonprofit basis;

(xi) an individual providing professional services within the scope of the individual's license with the Division of [~~Occupational and~~] Professional Licensing;

(xii) a country club;

(xiii) a nonprofit religious, ethnic, or community organization;

(xiv) a residential weight reduction center;

(xv) a business enterprise that only offers virtual services;

(xvi) a business enterprise that only offers a credit for a service that a separate business

## SB0043S07 compared with SB0043S06

enterprise offers;

(xvii) the owner of a lodging establishment, as defined in Section 29-2-102, if the owner only provides access to the lodging establishment's facility to:

- (A) a guest, as defined in Section 29-2-102; or
- (B) an operator or employee of the lodging establishment;

(xviii) an association, declarant, owner, lessor, or developer of a residential housing complex, planned community, or development, if at least 80% of the individuals accessing the facility reside in the housing complex, planned community, or development; or

(xix) a person offering a personal training service exclusively as an employee or independent contractor of a health spa.

(6) "Health spa facility" means a facility to which a business entity provides access:

- (a) for a charge or a fee; and
- (b) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.

(7) (a) "Health spa service" means instruction, a service, a privilege, or a right that a health spa offers for sale.

(b) "Health spa service" includes a personal training service.

(8) "Personal training service" means the personalized instruction, training, supervision, or monitoring of an individual's physical fitness or well-being, through exercise, weight control, or athletics.

Section 3. Section **15A-1-102** is amended to read:

### **15A-1-102. Definitions.**

As used in this title:

(1) "Board" means the Utah Fire Prevention Board created in Section 53-7-203.

(2) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103, except as provided in:

- (a) Part 4, State Fire Code Administration Act; and
  - (b) Chapter 5, State Fire Code Act.
- (3) "State Construction Code" means the State Construction Code adopted by:
- (a) Chapter 2, Adoption of State Construction Code;
  - (b) Chapter 2a, Tall Wood Buildings of Mass Timber Construction Incorporated as

## SB0043S07 compared with SB0043S06

Part of State Construction Code;

(c) Chapter 3, Statewide Amendments Incorporated as Part of State Construction Code;

(d) Chapter 4, Local Amendments Incorporated as Part of State Construction Code;

and

(e) Chapter 6, Additional Construction Requirements.

(4) "State Fire Code" means the State Fire Code adopted by Chapter 5, State Fire Code

Act.

(5) "Utah Code" means the Utah Code Annotated (1953), as amended.

Section 4. Section **15A-3-402** is amended to read:

### **15A-3-402. Amendments to Chapters 1 through 5 of IMC.**

(1) In IMC, Table 403.3.1.1, note h is deleted and replaced with the following:

"h. 1. A nail salon shall provide each manicure station where a nail technician files or shapes an acrylic nail, as defined by rule by the Division of [~~Occupational and~~] Professional Licensing, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, with:

a. a source capture system equipped with, at minimum, a MERV 8 particulate filter and an activated carbon filter that is capable of filtering and recirculating air to inside space at a rate not less than 50 cfm per station; or

b. a source capture system capable of exhausting not less than 50 cfm per station.

c. A nail salon that complies with Note h. 1a or h. 1b is not required to comply with the labeling, listing, or testing requirements described in International Mechanical Code sections 301.7 or 301.8.

2. For a source capture system described in paragraph 1, the source capture system inlets for exhausting or recirculating air shall be located in accordance with Section 502.20.

3. Where one or more exhausting source capture systems described in paragraph 1 operate continuously during occupancy, the source capture system exhaust rate shall be permitted to be applied to the exhaust flow rate required by Table 403.3.1.1 for the nail salon.

4. The requirements of this note apply to:

a. an existing nail salon that remodels the nail salon after July 1, 2017;

b. a new nail salon that begins construction after July 1, 2017; and

c. all nail salons beginning on July 1, 2020."

## **SB0043S07 compared with SB0043S06**

(2) In IMC, Section 502.20 is deleted and rewritten as follows:

"502.20 Manicure stations. A nail salon that files or shapes an acrylic nail shall provide each manicure station with a source capture system in accordance with Table 403.3.1.1, note h. For a manicure table that does not have factory-installed source capture system inlets for recirculating or exhausting air, a nail salon shall provide the manicure table with inlets for recirculating or exhausting air located not more than 12 inches (305 mm) horizontally and vertically from the point of any acrylic chemical application.

Exception: Section 502.20 applies to a manicure station in:

- a. an existing nail salon that remodels the nail salon after July 1, 2017;
- b. a new nail salon that begins construction after July 1, 2017; and
- c. all nail salons beginning on July 1, 2020."

Section 5. Section **17-21-18.5** is amended to read:

### **17-21-18.5. Fees of county recorder.**

(1) The county recorder shall receive the following fees:

(a) for recording any instrument, not otherwise provided for, other than bonds of public officers, \$40;

(b) for recording any instrument, including those provided for under Title 70A, Uniform Commercial Code, other than bonds of public officers, and not otherwise provided for, \$40, and if an instrument contains more than 10 descriptions, \$2 for each additional description;

(c) for recording mining location notices and affidavits of labor affecting mining claims, \$40; and

(d) for an affidavit or proof of labor which contains more than 10 mining claims, \$2 for each additional mining claim.

(2) (a) Each county recorder shall record the mining rules of the several mining districts in each county without fee.

(b) Certified copies of these records shall be received in all tribunals and before all officers of this state as prima facie evidence of the rules.

(3) The county recorder shall receive the following fees:

(a) for copies of any record or document, a reasonable fee as determined by the county legislative body;

## SB0043S07 compared with SB0043S06

- (b) for each certificate under seal, \$5;
  - (c) for recording any plat, \$50 for each sheet and \$2 for each lot or unit designation;
  - (d) for taking and certifying acknowledgments, including seal, \$5 for one name and \$2 for each additional name;
  - (e) for recording any license issued by the Division of [~~Occupational and~~] Professional Licensing, \$40; and
  - (f) for recording a federal tax lien, \$40, and for the discharge of the lien, \$40.
- (4) A county recorder may not charge more than one recording fee for each instrument, regardless of whether the instrument bears multiple descriptive titles or includes one or more attachments as part of the instrument.
- (5) By January 1, 2022, each county shall accept and provide for electronic recording of instruments.
- (6) The county may determine and collect a fee for all services not enumerated in this section.
- (7) A county recorder may not be required to collect a fee for services that are unrelated to the county recorder's office.

Section 6. Section **17-22-30** is amended to read:

**17-22-30. Prohibition on providing copy of booking photograph -- Statement required -- Criminal liability for false statement -- Remedy for failure to remove or delete.**

- (1) As used in this section:
  - (a) "Booking photograph" means a photograph or image of an individual that is generated:
    - (i) for identification purposes; and
    - (ii) when the individual is booked into a county jail.
  - (b) "Publish-for-pay publication" or "publish-for-pay website" means a publication or website that requires the payment of a fee or other consideration in order to remove or delete a booking photograph from the publication or website.
- (2) A sheriff may not provide a copy of a booking photograph in any format to a person requesting a copy of the booking photograph if:
  - (a) the booking photograph will be placed in a publish-for-pay publication or posted to

## SB0043S07 compared with SB0043S06

a publish-for-pay website; or

(b) the booking photograph is a protected record under Subsection 63G-2-305[~~(82)~~](81).

(3) (a) A person who requests a copy of a booking photograph from a sheriff shall, at the time of making the request, submit a statement signed by the person affirming that the booking photograph will not be placed in a publish-for-pay publication or posted to a publish-for-pay website.

(b) A person who submits a false statement under Subsection (3)(a) is subject to criminal liability as provided in Section 76-8-504.

(4) (a) Except as provided in Subsection (5), a publish-for-pay publication or a publish-for-pay website shall remove and destroy a booking photograph of an individual who submits a request for removal and destruction within 30 calendar days after the day on which the individual makes the request.

(b) A publish-for-pay publication or publish-for-pay website described in Subsection (4)(a) may not condition removal or destruction of the booking photograph on the payment of a fee in an amount greater than \$50.

(c) If the publish-for-pay publication or publish-for-pay website described in Subsection (4)(a) does not remove and destroy the booking photograph in accordance with Subsection (4)(a), the publish-for-pay publication or publish-for-pay website is liable for:

(i) all costs, including reasonable attorney fees, resulting from any legal action the individual brings in relation to the failure of the publish-for-pay publication or publish-for-pay website to remove and destroy the booking photograph; and

(ii) a civil penalty of \$50 per day for each day after the 30-day deadline described in Subsection (4)(a) on which the booking photograph is visible or publicly accessible in the publish-for-pay publication or on the publish-for-pay website.

(5) (a) A publish-for-pay publication or a publish-for-pay website shall remove and destroy a booking photograph of an individual who submits a request for removal and destruction within seven calendar days after the day on which the individual makes the request if:

(i) the booking photograph relates to a criminal charge:

(A) on which the individual was acquitted or not prosecuted; or

## **SB0043S07 compared with SB0043S06**

(B) that was expunged, vacated, or pardoned; and

(ii) the individual submits, in relation to the request, evidence of a disposition described in Subsection (5)(a)(i).

(b) If the publish-for-pay publication or publish-for-pay website described in Subsection (5)(a) does not remove and destroy the booking photograph in accordance with Subsection (5)(a), the publish-for-pay publication or publish-for-pay website is liable for:

(i) all costs, including reasonable attorney fees, resulting from any legal action that the individual brings in relation to the failure of the publish-for-pay publication or publish-for-pay website to remove and destroy the booking photograph; and

(ii) a civil penalty of \$100 per day for each day after the seven-day deadline described in Subsection (5)(a) on which the booking photograph is visible or publicly accessible in the publish-for-pay publication or on the publish-for-pay website.

(c) An act of a publish-for-pay publication or publish-for-pay website described in Subsection (5)(a) that seeks to condition removal or destruction of the booking photograph on the payment of any fee or amount constitutes theft by extortion under Section 76-6-406.

Section 7. Section **17-23-17** is amended to read:

**17-23-17. Map of boundary survey -- Procedure for filing -- Contents -- Marking of monuments -- Record of corner changes -- Penalties.**

(1) As used in this section:

(a) "Land surveyor" means a surveyor who is licensed to practice land surveying in this state in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(b) (i) "Township" means a term used in the context of identifying a geographic area in common surveyor practice.

(ii) "Township" does not mean a metro township as that term is defined in Section 10-2a-403.

(2) (a) (i) Each land surveyor making a boundary survey of lands within this state to establish or reestablish a boundary line or to obtain data for constructing a map or plat showing a boundary line shall file a map of the survey that meets the requirements of this section with the county surveyor or designated office within 90 days of the establishment or reestablishment of a boundary.



## **SB0043S07 compared with SB0043S06**

(ii) A land surveyor who fails to file a map of the survey as required by Subsection (2)(a)(i) is guilty of an infraction.

(iii) Each failure to file a map of the survey as required by Subsection (2)(a)(i) is a separate violation.

(b) The county surveyor or designated office shall file and index the map of the survey.

(c) The map shall be a public record in the office of the county surveyor or designated office.

(3) This type of map shall show:

(a) the location of survey by quarter section and township and range;

(b) the date of survey;

(c) the scale of drawing and north point;

(d) the distance and course of all lines traced or established, giving the basis of bearing and the distance and course to two or more section corners or quarter corners, including township and range, or to identified monuments within a recorded subdivision;

(e) all measured bearings, angles, and distances separately indicated from those of record;

(f) a written boundary description of property surveyed;

(g) all monuments set and their relation to older monuments found;

(h) a detailed description of monuments found and monuments set, indicated separately;

(i) the surveyor's seal or stamp; and

(j) the surveyor's business name and address.

(4) (a) The map shall contain a written narrative that explains and identifies:

(i) the purpose of the survey;

(ii) the basis on which the lines were established; and

(iii) the found monuments and deed elements that controlled the established or reestablished lines.

(b) If the narrative is a separate document, it shall contain:

(i) the location of the survey by quarter section and by township and range;

(ii) the date of the survey;

(iii) the surveyor's stamp or seal; and

## SB0043S07 compared with SB0043S06

(iv) the surveyor's business name and address.

(c) The map and narrative shall be referenced to each other if they are separate documents.

(5) The map and narrative shall be created on material of a permanent nature on stable base reproducible material in the sizes required by the county surveyor.

(6) (a) Any monument set by a licensed professional land surveyor to mark or reference a point on a property or land line shall be durably and visibly marked or tagged with the registered business name or the letters "L.S." followed by the registration number of the surveyor in charge.

(b) If the monument is set by a licensed land surveyor who is a public officer, it shall be marked with the official title of the office.

(7) (a) If, in the performance of a survey, a surveyor finds or makes any changes to the section corner or quarter-section corner, or their accessories, the surveyor shall complete and submit to the county surveyor or designated office a record of the changes made.

(b) The record shall be submitted within 45 days of the corner visits and shall include the surveyor's seal, business name, and address.

(8) The Utah State Board of Engineers and Land Surveyors Examiners may revoke the license of any land surveyor who fails to comply with the requirements of this section, according to the procedures set forth in Title 58, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act.

(9) Each federal or state agency, board, or commission, local district, special service district, or municipal corporation that makes a boundary survey of lands within this state shall comply with this section.

Section 8. Section **26-2-2** is amended to read:

### **26-2-2. Definitions.**

As used in this chapter:

(1) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(2) "Certified nurse midwife" means an individual who:

(a) is licensed to practice as a certified nurse midwife under Title 58, Chapter 44a,

## SB0043S07 compared with SB0043S06

### Nurse Midwife Practice Act; and

(b) has completed an education program regarding the completion of a certificate of death developed by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(2)]~~ (3) "Custodial funeral service director" means a funeral service director who:

- (a) is employed by a licensed funeral establishment; and
- (b) has custody of a dead body.

~~[(3)]~~ (4) "Dead body" or "decedent" means a human body or parts of the human body from the condition of which it reasonably may be concluded that death occurred.

~~[(4)]~~ (5) "Dead fetus" means a product of human conception, other than those circumstances described in Subsection 76-7-301(1):

- (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery; and
- (b) that was not born alive.

~~[(5)]~~ (6) "Declarant father" means a male who claims to be the genetic father of a child, and, along with the biological mother, signs a voluntary declaration of paternity to establish the child's paternity.

~~[(6)]~~ (7) "Dispositioner" means:

(a) a person designated in a written instrument, under Subsection 58-9-602(1), as having the right and duty to control the disposition of the decedent, if the person voluntarily acts as the dispositioner; or

(b) the next of kin of the decedent, if:

(i) (A) a person has not been designated as described in Subsection ~~[(6)]~~ (7)(a); or  
(B) the person described in Subsection ~~[(6)]~~ (7)(a) is unable or unwilling to exercise the right and duty described in Subsection ~~[(6)]~~ (7)(a); and

(ii) the next of kin voluntarily acts as the dispositioner.

~~[(7)]~~ (8) "Fetal remains" means:

- (a) an aborted fetus as that term is defined in Section 26-21-33; or
- (b) a miscarried fetus as that term is defined in Section 26-21-34.

~~[(8)]~~ (9) "File" means the submission of a completed certificate or other similar document, record, or report as provided under this chapter for registration by the state registrar

## SB0043S07 compared with SB0043S06

or a local registrar.

~~[(9)]~~ (10) "Funeral service director" means the same as that term is defined in Section 58-9-102.

~~[(10)]~~ (11) "Health care facility" means the same as that term is defined in Section 26-21-2.

~~[(11)]~~ (12) "Health care professional" means a physician, physician assistant, ~~[or]~~ nurse practitioner, or certified nurse midwife.

~~[(12)]~~ (13) "Licensed funeral establishment" means:

(a) if located in Utah, a funeral service establishment, as that term is defined in Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act; or

(b) if located in a state, district, or territory of the United States other than Utah, a funeral service establishment that complies with the licensing laws of the jurisdiction where the establishment is located.

~~[(13)]~~ (14) "Live birth" means the birth of a child who shows evidence of life after the child is entirely outside of the mother.

~~[(14)]~~ (15) "Local registrar" means a person appointed under Subsection 26-2-3(3)(b).

~~[(15)]~~ (16) "Nurse practitioner" means an individual who:

(a) is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act; and

(b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(16)]~~ (17) "Office" means the Office of Vital Records and Statistics within the Department of Health, operating under Title 26, Chapter 2, Utah Vital Statistics Act.

~~[(17)]~~ (18) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(18)]~~ (19) "Physician assistant" means an individual who:

(a) is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act; and

(b) has completed an education program regarding the completion of a certificate of

## SB0043S07 compared with SB0043S06

death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(19)]~~ (20) "Presumed father" means the father of a child conceived or born during a marriage as defined in Section 30-1-17.2.

~~[(20)]~~ (21) "Registration" or "register" means acceptance by the local or state registrar of a certificate and incorporation of the certificate into the permanent records of the state.

~~[(21)]~~ (22) "State registrar" means the state registrar of vital records appointed under Subsection 26-2-3(2)(e).

~~[(22)]~~ (23) "Vital records" means:

(a) registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment;

(b) amendments to any of the registered certificates or reports described in Subsection ~~[(22)]~~ (23)(a);

(c) an adoption document; and

(d) other similar documents.

~~[(23)]~~ (24) "Vital statistics" means the data derived from registered certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment.

Section 9. Section **26-4-10.5** is amended to read:

**26-4-10.5. Medical examiner to report death caused by prescribed controlled substance poisoning or overdose.**

(1) If a medical examiner determines that the death of a person who is 12 years ~~[of age]~~ old or older at the time of death resulted from poisoning or overdose involving a prescribed controlled substance, the medical examiner shall, within three business days after the day on which the medical examiner determines the cause of death, send a written report to the Division of ~~[Occupational and]~~ Professional Licensing, created in Section 58-1-103, that includes:

(a) the decedent's name;

(b) each drug or other substance found in the decedent's system that may have contributed to the poisoning or overdose, if known; and

(c) the name of each person the medical examiner has reason to believe may have

## **SB0043S07 compared with SB0043S06**

prescribed a controlled substance described in Subsection (1)(b) to the decedent.

(2) This section does not create a new cause of action.

Section 10. Section **26-6-27** is amended to read:

### **26-6-27. Information regarding communicable or reportable diseases**

#### **confidentiality -- Exceptions.**

(1) Information collected pursuant to this chapter in the possession of the department or local health departments relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this chapter shall be held by the department and local health departments as strictly confidential. The department and local health departments may not release or make public that information upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided by this section.

(2) The information described in Subsection (1) may be released by the department or local health departments only in accordance with the requirements of this chapter and as follows:

(a) specific medical or epidemiological information may be released with the written consent of the individual identified in that information or, if that individual is deceased, his next-of-kin;

(b) specific medical or epidemiological information may be released to medical personnel or peace officers in a medical emergency, as determined by the department in accordance with guidelines it has established, only to the extent necessary to protect the health or life of the individual identified in the information, or of the attending medical personnel or law enforcement or public safety officers;

(c) specific medical or epidemiological information may be released to authorized personnel within the department, local health departments, public health authorities, official health agencies in other states, the United States Public Health Service, the Centers for Disease Control and Prevention (CDC), or when necessary to continue patient services or to undertake public health efforts to interrupt the transmission of disease;

(d) if the individual identified in the information is under the age of 18, the information may be released to the Division of Child and Family Services within the Department of Human Services in accordance with Section 62A-4a-403. If that information is required in a court proceeding involving child abuse or sexual abuse under Title 76, Chapter 5, Offenses Against

## **SB0043S07 compared with SB0043S06**

the Person, the information shall be disclosed in camera and sealed by the court upon conclusion of the proceedings;

(e) specific medical or epidemiological information may be released to authorized personnel in the department or in local health departments, and to the courts, to carry out the provisions of this title, and rules adopted by the department in accordance with this title;

(f) specific medical or epidemiological information may be released to blood banks, organ and tissue banks, and similar institutions for the purpose of identifying individuals with communicable diseases. The department may, by rule, designate the diseases about which information may be disclosed under this subsection, and may choose to release the name of an infected individual to those organizations without disclosing the specific disease;

(g) specific medical or epidemiological information may be released in such a way that no individual is identifiable;

(h) specific medical or epidemiological information may be released to a "health care provider" as defined in Section 78B-3-403, health care personnel, and public health personnel who have a legitimate need to have access to the information in order to assist the patient, or to protect the health of others closely associated with the patient;

(i) specific medical or epidemiological information regarding a health care provider, as defined in Section 78B-3-403, may be released to the department, the appropriate local health department, and the Division of [~~Occupational and~~] Professional Licensing within the Department of Commerce, if the identified health care provider is endangering the safety or life of any individual by his continued practice of health care;

(j) specific medical or epidemiological information may be released in accordance with Section 26-6-31 if an individual is not identifiable; and

(k) specific medical or epidemiological information may be released to a state agency as defined in Section 63A-17-901, to perform the analysis described in Subsection 26-6-32(4) if the state agency agrees to act in accordance with the requirements in this chapter.

(3) The provisions of Subsection (2)(h) do not create a duty to warn third parties, but is intended only to aid health care providers in their treatment and containment of infectious disease.

Section 11. Section **26-7-13** is amended to read:

**26-7-13. Opioid and Overdose Fatality Review Committee.**

## SB0043S07 compared with SB0043S06

(1) As used in this section:

(a) "Committee" means the Opioid and Overdose Fatality Review Committee created in this section.

(b) "Opioid overdose death" means a death primarily caused by opioids or another substance that closely resembles an opioid.

(2) The department shall establish the Opioid and Overdose Fatality Review Committee.

(3) (a) The committee shall consist of:

(i) the attorney general, or the attorney general's designee;

(ii) a state, county, or municipal law enforcement officer;

(iii) the manager of the department's Violence Injury Program, or the manager's designee;

(iv) an emergency medical services provider;

(v) a representative from the Office of the Medical Examiner;

(vi) a representative from the Division of Substance Abuse and Mental Health;

(vii) a representative from the Office of Vital Records;

(viii) a representative from the Office of Health Care Statistics;

(ix) a representative from the Division of [~~Occupational and~~] Professional Licensing;

(x) a healthcare professional who specializes in the prevention, diagnosis, and treatment of substance use disorders;

(xi) a representative from a state or local jail or detention center;

(xii) a representative from the Department of Corrections;

(xiii) a representative from Juvenile Justice Services;

(xiv) a representative from the Department of Public Safety;

(xv) a representative from the Commission on Criminal and Juvenile Justice;

(xvi) a physician from a Utah-based medical center; and

(xvii) a physician from a nonprofit vertically integrated health care organization.

(b) The president of the Senate may appoint one member of the Senate, and the speaker of the House of Representatives may appoint one member of the House of Representatives, to serve on the committee.

(4) The executive director of the department shall appoint a committee coordinator.



## **SB0043S07 compared with SB0043S06**

(5) (a) The department shall give the committee access to all reports, records, and other documents that are relevant to the committee's responsibilities under Subsection (6) including reports, records, or documents that are private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) In accordance with Subsection 63G-2-206(6), the committee is subject to the same restrictions on disclosure of a report, record, or other document received under Subsection (5)(a) as the department.

(6) The committee shall:

(a) conduct a multidisciplinary review of available information regarding a decedent of an opioid overdose death, which shall include:

(i) consideration of the decedent's points of contact with health care systems, social services systems, criminal justice systems, and other systems; and

(ii) identification of specific factors that put the decedent at risk for opioid overdose;

(b) promote cooperation and coordination among government entities involved in opioid misuse, abuse, or overdose prevention;

(c) develop an understanding of the causes and incidence of opioid overdose deaths in the state;

(d) make recommendations for changes to law or policy that may prevent opioid overdose deaths;

(e) inform public health and public safety entities of emerging trends in opioid overdose deaths;

(f) monitor overdose trends on non-opioid overdose deaths; and

(g) review non-opioid overdose deaths in the manner described in Subsection (6)(a), when the committee determines that there are a substantial number of overdose deaths in the state caused by the use of a non-opioid.

(7) A committee may interview or request information from a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the review of an opioid overdose death.

(8) A majority vote of committee members present constitutes the action of the committee.

(9) The committee may meet up to eight times each year.

## **SB0043S07 compared with SB0043S06**

(10) When an individual case is discussed in a committee meeting under Subsection (6)(a), (6)(g), or (7), the committee shall close the meeting in accordance with Sections 52-4-204 through 52-4-206.

Section 12. Section **26-8a-310** is amended to read:

### **26-8a-310. Background clearance for emergency medical service personnel.**

(1) Subject to Section 26-8a-310.5, the department shall determine whether to grant background clearance for an individual seeking licensure or certification under Section 26-8a-302 from whom the department receives:

(a) the individual's social security number, fingerprints, and other personal identification information specified by the department under Subsection (4); and

(b) any fees established by the department under Subsection (10).

(2) The department shall determine whether to deny or revoke background clearance for individuals for whom the department has previously granted background clearance.

(3) The department shall determine whether to grant, deny, or revoke background clearance for an individual based on an initial and ongoing evaluation of information the department obtains under Subsections (5) and (11), which, at a minimum, shall include an initial criminal background check of state, regional, and national databases using the individual's fingerprints.

(4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that specify:

(a) the criteria the department will use under Subsection (3) to determine whether to grant, deny, or revoke background clearance; and

(b) the other personal identification information an individual seeking licensure or certification under Section 26-8a-302 must submit under Subsection (1).

(5) To determine whether to grant, deny, or revoke background clearance, the department may access and evaluate any of the following:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) adjudications by a juvenile court of committing an act that if committed by an adult would be a felony or misdemeanor, if:

## SB0043S07 compared with SB0043S06

- (i) the applicant is under 28 years old; or
  - (ii) the applicant:
    - (A) is over 28 years old; and
    - (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor;
  - (c) juvenile court arrest, adjudication, and disposition records, other than those under Subsection (5)(b), as allowed under Section 78A-6-209;
  - (d) child abuse or neglect findings described in Section 80-3-404;
  - (e) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;
  - (f) the Department of Human Services' Division of Aging and Adult Services database of reports of vulnerable adult abuse, neglect, or exploitation, described in Section 62A-3-311.1;
  - (g) Division of [~~Occupational and~~] Professional Licensing records of licensing and certification under Title 58, Occupations and Professions;
  - (h) records in other federal criminal background databases available to the state; and
  - (i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance, pending diversion agreements, or dispositions.
- (6) Except for the Department of Public Safety, an agency may not charge the department for information accessed under Subsection (5).
- (7) When evaluating information under Subsection (3), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.
- (8) The department shall adopt measures to protect the security of information the department accesses under Subsection (5), which shall include limiting access by department employees to those responsible for acquiring, evaluating, or otherwise processing the information.
- (9) The department may disclose personal identification information the department receives under Subsection (1) to the Department of Human Services to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (5)(d) through (f).
- (10) The department may charge fees, in accordance with Section 63J-1-504, to pay

## SB0043S07 compared with SB0043S06

for:

(a) the cost of obtaining, storing, and evaluating information needed under Subsection (3), both initially and on an ongoing basis, to determine whether to grant, deny, or revoke background clearance; and

(b) other department costs related to granting, denying, or revoking background clearance.

(11) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:

(a) retain, separate from other division records, personal information under Subsection (1), including any fingerprints sent to it by the Department of Health; and

(b) notify the Department of Health upon receiving notice that an individual for whom personal information has been retained is the subject of:

(i) a warrant for arrest;

(ii) an arrest;

(iii) a conviction, including a plea in abeyance; or

(iv) a pending diversion agreement.

(12) The department shall use the Direct Access Clearance System database created under Section 26-21-209 to manage information about the background clearance status of each individual for whom the department is required to make a determination under Subsection (1).

(13) Clearance granted for an individual licensed or certified under Section 26-8a-302 is valid until two years after the day on which the individual is no longer licensed or certified in Utah as emergency medical service personnel.

Section 13. Section **26-15-3** is amended to read:

### **26-15-3. Department to advise regarding the plumbing code.**

(1) The department shall advise the Division of [~~Occupational and~~] Professional Licensing and the Uniform Building Code Commission with respect to the adoption of a state construction code under Section 15A-1-204, including providing recommendations as to:

(a) a specific edition of a plumbing code issued by a nationally recognized code authority; and

(b) any amendments to a nationally recognized code.

(2) The department may enforce the plumbing code adopted under Section 15A-1-204.

## **SB0043S07 compared with SB0043S06**

(3) Section 58-56-9 does not apply to health inspectors acting under this section.

Section 14. Section **26-21-22** is amended to read:

### **26-21-22. Reporting of disciplinary information -- Immunity from liability.**

A health care facility licensed under this chapter which reports disciplinary information on a licensed nurse to the Division of [~~Occupational and~~] Professional Licensing within the Department of Commerce as required by Section 58-31b-702 is entitled to the immunity from liability provided by that section.

Section 15. Section **26-21-26** is amended to read:

### **26-21-26. General acute hospital to report prescribed controlled substance poisoning or overdose.**

(1) If a person who is 12 years [~~of age~~] old or older is admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance, the general acute hospital shall, within three business days after the day on which the person is admitted, send a written report to the Division of [~~Occupational and~~] Professional Licensing, created in Section 58-1-103, that includes:

(a) the patient's name and date of birth;

(b) each drug or other substance found in the person's system that may have contributed to the poisoning or overdose, if known;

(c) the name of each person who the general acute hospital has reason to believe may have prescribed a controlled substance described in Subsection (1)(b) to the person, if known; and

(d) the name of the hospital and the date of admission.

(2) Nothing in this section may be construed as creating a new cause of action.

Section 16. Section **26-21-204** is amended to read:

### **26-21-204. Clearance.**

(1) The department shall determine whether to grant clearance for each applicant for whom it receives:

(a) the personal identification information specified by the department under Subsection 26-21-204(4)(b); and

(b) any fees established by the department under Subsection 26-21-204(9).

(2) The department shall establish a procedure for obtaining and evaluating relevant

## **SB0043S07 compared with SB0043S06**

information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files.

(3) The department may review the following sources to determine whether an individual should be granted or retain clearance, which may include:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 80-3-404;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of [~~Occupational and~~] Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) The department shall adopt rules that:

(a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:

(i) based on an initial evaluation and ongoing review of information under Subsection (3); and

(ii) including consideration of the relationship the following may have to patient and resident protection:

(A) warrants for arrest;

## SB0043S07 compared with SB0043S06

(B) arrests;

(C) convictions, including pleas in abeyance;

(D) pending diversion agreements;

(E) adjudications by a juvenile court under Section 80-6-701 if the individual is over 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old; and

(F) any other findings under Subsection (3); and

(b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:

(i) the applicant's Social Security number; and

(ii) fingerprints.

(5) For purposes of Subsection (4)(a), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.

(6) The Department of Public Safety, the Administrative Office of the Courts, the Department of Human Services, the Division of [~~Occupational and~~] Professional Licensing, and any other state agency or political subdivision of the state:

(a) shall allow the department to review the information the department may review under Subsection (3); and

(b) except for the Department of Public Safety, may not charge the department for access to the information.

(7) The department shall adopt measures to protect the security of the information it reviews under Subsection (3) and strictly limit access to the information to department employees responsible for processing an application for clearance.

(8) The department may disclose personal identification information specified under Subsection (4)(b) to the Department of Human Services to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (3)(d) through (f).

(9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:

## SB0043S07 compared with SB0043S06

- (a) the cost of obtaining and reviewing information under Subsection (3);
- (b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under Section 26-21-209; and
- (c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance should be retained.

Section 17. Section **26-49-205** is amended to read:

**26-49-205. Provision of volunteer health or veterinary services -- Administrative sanctions -- Authority of Division of Professional Licensing.**

(1) Subject to Subsections (2) and (3), a volunteer health practitioner shall comply with the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other Utah laws.

(2) Except as otherwise provided in Subsection (3), this chapter does not authorize a volunteer health practitioner to provide services that are outside the volunteer health practitioner's scope of practice, even if a similarly licensed practitioner in Utah would be permitted to provide the services.

(3) (a) In accordance with this section and Section 58-1-405, the Division of [~~Occupational and~~] Professional Licensing may issue an order modifying or restricting the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter.

(b) An order under this subsection takes effect immediately, without prior notice or comment, and is not a rule within the meaning of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, or a directive within the meaning of Title 63G, Chapter 4, Administrative Procedures Act.

(4) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide under this chapter.

(5) (a) A volunteer health practitioner does not engage in unauthorized practice unless the volunteer health practitioner has reason to know of any limitation, modification, or restriction under this chapter, Title 58, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, or that a similarly licensed practitioner in Utah would not be permitted to provide the services.



## SB0043S07 compared with SB0043S06

(b) A volunteer health practitioner has reason to know of a limitation, modification, or restriction, or that a similarly licensed practitioner in Utah would not be permitted to provide a service, if:

(i) the volunteer health practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in Utah would not be permitted to provide the service; or

(ii) from all the facts and circumstances known to the volunteer health practitioner at the relevant time, a reasonable person would conclude that:

(A) the limitation, modification, or restriction exists; or

(B) a similarly licensed practitioner in Utah would not be permitted to provide the service.

(6) In addition to the authority granted by law of Utah other than this chapter to regulate the conduct of volunteer health practitioners, the Division of [~~Occupational and~~] Professional Licensing Act or other disciplinary authority in Utah:

(a) may impose administrative sanctions upon a volunteer health practitioner licensed in Utah for conduct outside of Utah in response to an out-of-state emergency;

(b) may impose administrative sanctions upon a volunteer health practitioner not licensed in Utah for conduct in Utah in response to an in-state emergency; and

(c) shall report any administrative sanctions imposed upon a volunteer health practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the volunteer health practitioner is known to be licensed.

(7) In determining whether or not to impose administrative sanctions under Subsection (6), the Division of [~~Occupational and~~] Professional Licensing Act or other disciplinary authority shall consider the circumstances in which the conduct took place, including:

(a) any exigent circumstances; and

(b) the volunteer health practitioner's scope of practice, education, training, experience, and specialized skill.

Section 18. Section **26-55-105** is amended to read:

### **26-55-105. Standing prescription drug orders for an opiate antagonist.**

(1) Notwithstanding Title 58, Chapter 17b, Pharmacy Practice Act, a person licensed under Title 58, Chapter 17b, Pharmacy Practice Act, to dispense an opiate antagonist may

## SB0043S07 compared with SB0043S06

dispense the opiate antagonist:

(a) pursuant to a standing prescription drug order made in accordance with Subsection (2); and

(b) without any other prescription drug order from a person licensed to prescribe an opiate antagonist.

(2) A physician who is licensed to prescribe an opiate antagonist, including a physician acting in the physician's capacity as an employee of the department, or a medical director of a local health department, as defined in Section 26A-1-102, may issue a standing prescription drug order authorizing the dispensing of the opiate antagonist under Subsection (1) in accordance with a protocol that:

(a) limits dispensing of the opiate antagonist to:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event;

(ii) a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(iii) an overdose outreach provider for:

(A) furnishing to an individual who is at increased risk of experiencing an opiate-related drug overdose event, or to a family member of, friend of, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event, as provided in Section 26-55-106; or

(B) administering to an individual experiencing an opiate-related drug overdose event;

(b) requires the physician to specify the persons, by professional license number, authorized to dispense the opiate antagonist;

(c) requires the physician to review at least annually the dispensing practices of those authorized by the physician to dispense the opiate antagonist;

(d) requires those authorized by the physician to dispense the opiate antagonist to make and retain a record of each person to whom the opiate antagonist is dispensed, which shall include:

(i) the name of the person;

(ii) the drug dispensed; and

## **SB0043S07 compared with SB0043S06**

(iii) other relevant information; and

(e) is approved by the Division of [~~Occupational and~~] Professional Licensing within the Department of Commerce by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 19. Section **26-55-108** is amended to read:

### **26-55-108. Coprescription guidelines.**

(1) As used in this section:

(a) "Controlled substance prescriber" means the same as that term is defined in Section 58-37-6.5.

(b) "Coprescribe" means to issue a prescription for an opiate antagonist with a prescription for an opiate.

(2) The department shall, in consultation with the Physicians Licensing Board created in Section 58-67-201, the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201, and the [~~Department of Occupational and~~] Division of Professional Licensing created in Section 58-1-103, establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, scientifically based guidelines for controlled substance prescribers to coprescribe an opiate antagonist to a patient.

Section 20. Section **26-60-104** is amended to read:

### **26-60-104. Enforcement.**

(1) The Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103 is authorized to enforce the provisions of Section 26-60-103 as it relates to providers licensed under Title 58, Occupations and Professions.

(2) The department is authorized to enforce the provisions of Section 26-60-103 as it relates to providers licensed under this title.

(3) The Department of Human Services created in Section 62A-1-102 is authorized to enforce the provisions of Section 26-60-103 as it relates to providers licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.

Section 21. Section **26-61-202** is amended to read:

### **26-61-202. Cannabinoid Product Board -- Duties.**

(1) The board shall review any available scientific research related to the human use of cannabis, a cannabinoid product, or an expanded cannabinoid product that:

## **SB0043S07 compared with SB0043S06**

- (a) was conducted under a study approved by an IRB;
- (b) was conducted or approved by the federal government; or
- (c) (i) was conducted in another country; and
- (ii) demonstrates, as determined by the board, a sufficient level of scientific reliability and significance to merit the board's review.

(2) Based on the research described in Subsection (1), the board shall evaluate the safety and efficacy of cannabis, cannabinoid products, and expanded cannabinoid products, including:

- (a) medical conditions that respond to cannabis, cannabinoid products, and expanded cannabinoid products;
- (b) cannabis and cannabinoid dosage amounts and medical dosage forms;
- (c) interaction of cannabis, cannabinoid products, and expanded cannabinoid products with other treatments; and
- (d) contraindications, adverse reactions, and potential side effects from use of cannabis, cannabinoid products, and expanded cannabinoid products.

(3) Based on the board's evaluation under Subsection (2), the board shall develop guidelines for treatment with cannabis, a cannabinoid product, and an expanded cannabinoid product that include:

- (a) a list of medical conditions, if any, that the board determines are appropriate for treatment with cannabis, a cannabis product, a cannabinoid product, or an expanded cannabinoid product;
- (b) a list of contraindications, side effects, and adverse reactions that are associated with use of cannabis, cannabinoid products, or expanded cannabinoid products;
- (c) a list of potential drug-drug interactions between medications that the United States Food and Drug Administration has approved and cannabis, cannabinoid products, and expanded cannabinoid products; and
- (d) any other guideline the board determines appropriate.

(4) The board shall submit the guidelines described in Subsection (3) to the director of the Division of [~~Occupational and~~] Professional Licensing.

(5) Guidelines that the board develops under this section may not limit the availability of cannabis, cannabinoid products, or expanded cannabinoid products permitted under Title 4,

## SB0043S07 compared with SB0043S06

Chapter 41a, Cannabis Production Establishments, or Title 26, Chapter 61a, Utah Medical Cannabis Act.

Section 22. Section **26-61a-103** is amended to read:

### **26-61a-103. Electronic verification system.**

(1) The Department of Agriculture and Food, the department, the Department of Public Safety, and the Division of Technology Services shall:

(a) enter into a memorandum of understanding in order to determine the function and operation of the state electronic verification system in accordance with Subsection (2);

(b) coordinate with the Division of Purchasing, under Title 63G, Chapter 6a, Utah Procurement Code, to develop a request for proposals for a third-party provider to develop and maintain the state electronic verification system in coordination with the Division of Technology Services; and

(c) select a third-party provider who:

(i) meets the requirements contained in the request for proposals issued under Subsection (1)(b); and

(ii) may not have any commercial or ownership interest in a cannabis production establishment or a medical cannabis pharmacy.

(2) The Department of Agriculture and Food, the department, the Department of Public Safety, and the Division of Technology Services shall ensure that, on or before March 1, 2020, the state electronic verification system described in Subsection (1):

(a) allows an individual to apply for a medical cannabis patient card or, if applicable, a medical cannabis guardian card, provided that the card may not become active until:

(i) the relevant qualified medical provider completes the associated medical cannabis recommendation; or

(ii) for a medical cannabis card related to a limited medical provider's recommendation, the medical cannabis pharmacy completes the recording described in Subsection (2)(d);

(b) allows an individual to apply to renew a medical cannabis patient card or a medical cannabis guardian card in accordance with Section 26-61a-201;

(c) allows a qualified medical provider, or an employee described in Subsection (3) acting on behalf of the qualified medical provider, to:

(i) access dispensing and card status information regarding a patient:

## **SB0043S07 compared with SB0043S06**

(A) with whom the qualified medical provider has a provider-patient relationship; and

(B) for whom the qualified medical provider has recommended or is considering recommending a medical cannabis card;

(ii) electronically recommend, after an initial face-to-face visit with a patient described in Subsection 26-61a-201(4)(b), treatment with cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form and optionally recommend dosing guidelines;

(iii) electronically renew a recommendation to a medical cannabis patient cardholder or medical cannabis guardian cardholder:

(A) using telehealth services, for the qualified medical provider who originally recommended a medical cannabis treatment during a face-to-face visit with the patient; or

(B) during a face-to-face visit with the patient, for a qualified medical provider who did not originally recommend the medical cannabis treatment during a face-to-face visit; and

(iv) notate a determination of physical difficulty or undue hardship, described in Subsection 26-61a-202(1), to qualify a patient to designate a caregiver;

(d) beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of facility medical cannabis pharmacy recording, allows a medical cannabis pharmacy medical provider or medical cannabis pharmacy agent, in accordance with Subsection 26-61a-501(11)(a), to record:

(i) a patient's recommendation from a limited medical provider, including any directions of use, dosing guidelines, or caregiver indications from the limited medical provider; and

(ii) a limited medical provider's renewal of the provider's previous recommendation;

(e) connects with:

(i) an inventory control system that a medical cannabis pharmacy uses to track in real time and archive purchases of any cannabis in a medicinal dosage form, cannabis product in a medicinal dosage form, or a medical cannabis device, including:

(A) the time and date of each purchase;

(B) the quantity and type of cannabis, cannabis product, or medical cannabis device purchased;

(C) any cannabis production establishment, any medical cannabis pharmacy, or any medical cannabis courier associated with the cannabis, cannabis product, or medical cannabis

## SB0043S07 compared with SB0043S06

device; and

(D) the personally identifiable information of the medical cannabis cardholder who made the purchase; and

(ii) any commercially available inventory control system that a cannabis production establishment utilizes in accordance with Section 4-41a-103 to use data that the Department of Agriculture and Food requires by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, from the inventory tracking system that a licensee uses to track and confirm compliance;

(f) provides access to:

(i) the department to the extent necessary to carry out the department's functions and responsibilities under this chapter;

(ii) the Department of Agriculture and Food to the extent necessary to carry out the functions and responsibilities of the Department of Agriculture and Food under Title 4, Chapter 41a, Cannabis Production Establishments; and

(iii) the Division of [~~Occupational and~~] Professional Licensing to the extent necessary to carry out the functions and responsibilities related to the participation of the following in the recommendation and dispensing of medical cannabis:

(A) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(B) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(C) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(D) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(E) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act;

(g) provides access to and interaction with the state central patient portal;

(h) communicates dispensing information from a record that a medical cannabis pharmacy submits to the state electronic verification system under Subsection

26-61a-502(6)(a)(ii) to the controlled substance database;

(i) provides access to state or local law enforcement:

(i) during a law enforcement encounter, without a warrant, using the individual's driver

## **SB0043S07 compared with SB0043S06**

license or state ID, only for the purpose of determining if the individual subject to the law enforcement encounter has a valid medical cannabis card; or

(ii) after obtaining a warrant; and

(j) creates a record each time a person accesses the system that identifies the person who accesses the system and the individual whose records the person accesses.

(3) (a) Beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of allowing employee access under this Subsection (3), an employee of a qualified medical provider may access the electronic verification system for a purpose described in Subsection (2)(c) on behalf of the qualified medical provider if:

(i) the qualified medical provider has designated the employee as an individual authorized to access the electronic verification system on behalf of the qualified medical provider;

(ii) the qualified medical provider provides written notice to the department of the employee's identity and the designation described in Subsection (3)(a)(i); and

(iii) the department grants to the employee access to the electronic verification system.

(b) An employee of a business that employs a qualified medical provider may access the electronic verification system for a purpose described in Subsection (2)(c) on behalf of the qualified medical provider if:

(i) the qualified medical provider has designated the employee as an individual authorized to access the electronic verification system on behalf of the qualified medical provider;

(ii) the qualified medical provider and the employing business jointly provide written notice to the department of the employee's identity and the designation described in Subsection (3)(b)(i); and

(iii) the department grants to the employee access to the electronic verification system.

(4) (a) As used in this Subsection (4), "prescribing provider" means:

(i) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(ii) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(iii) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or



## **SB0043S07 compared with SB0043S06**

Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(iv) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act.

(b) Beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of allowing provider access under this Subsection (4), a prescribing provider may access information in the electronic verification system regarding a patient the prescribing provider treats.

(5) The department may release limited data that the system collects for the purpose of:

(a) conducting medical and other department approved research;

(b) providing the report required by Section 26-61a-703; and

(c) other official department purposes.

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

(a) the limitations on access to the data in the state electronic verification system as described in this section; and

(b) standards and procedures to ensure accurate identification of an individual requesting information or receiving information in this section.

(7) (a) Any person who knowingly and intentionally releases any information in the state electronic verification system in violation of this section is guilty of a third degree felony.

(b) Any person who negligently or recklessly releases any information in the state electronic verification system in violation of this section is guilty of a class C misdemeanor.

(8) (a) Any person who obtains or attempts to obtain information from the state electronic verification system by misrepresentation or fraud is guilty of a third degree felony.

(b) Any person who obtains or attempts to obtain information from the state electronic verification system for a purpose other than a purpose this chapter authorizes is guilty of a third degree felony.

(9) (a) Except as provided in Subsection (9)(e), a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person information obtained from the state electronic verification system for any purpose other than a purpose specified in this section.

(b) Each separate violation of this Subsection (9) is:

## SB0043S07 compared with SB0043S06

(i) a third degree felony; and

(ii) subject to a civil penalty not to exceed \$5,000.

(c) The department shall determine a civil violation of this Subsection (9) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(d) Civil penalties assessed under this Subsection (9) shall be deposited into the General Fund.

(e) This Subsection (9) does not prohibit a person who obtains information from the state electronic verification system under Subsection (2)(a), (c), or (f) 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;

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

(iii) discussing or sharing that information about the patient with the patient.

Section 23. Section **26-61a-106** is amended to read:

**26-61a-106. Qualified medical provider registration -- Continuing education -- Treatment recommendation -- Limited medical provider.**

(1) (a) (i) Except as provided in Subsection (1)(b), an individual may not recommend a medical cannabis treatment unless the department registers the individual as a qualified medical provider in accordance with this section.

(ii) Notwithstanding Subsection (1)(a)(i), a qualified medical provider who is podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act, may not recommend a medical cannabis treatment except within the course and scope of a practice of podiatry, as that term is defined in Section 58-5a-102.

(b) Beginning on the earlier of September 1, 2021, or the date on which the department gives notice that the electronic verification system is functionally capable as described in Subsection 26-61a-103(2)(d), an individual who meets the recommending qualifications may recommend a medical cannabis treatment as a limited medical provider without registering under Subsection (1)(a) if:

(i) the individual recommends the use of medical cannabis to the patient through an order described in Subsection (1)(c) after:

(A) a face-to-face visit for an initial recommendation or the renewal of a

## **SB0043S07 compared with SB0043S06**

recommendation for a patient for whom the limited medical provider did not make the patient's original recommendation; or

(B) a visit using telehealth services for a renewal of a recommendation for a patient for whom the limited medical provider made the patient's original recommendation; and

(ii) the individual's recommendation or renewal would not cause the total number of the individual's patients who have a valid medical cannabis patient card or provisional patient card resulting from the individual's recommendation to exceed 15.

(c) The individual described in Subsection (1)(b) shall communicate the individual's recommendation through an order for the medical cannabis pharmacy to record the individual's recommendation or renewal in the state electronic verification system under the individual's recommendation that:

(i) (A) that the individual or the individual's employee sends electronically to a medical cannabis pharmacy; or

(B) that the individual gives to the patient in writing for the patient to deliver to a medical cannabis pharmacy; and

(ii) may include:

(A) directions of use or dosing guidelines; and

(B) an indication of a need for a caregiver in accordance with Subsection 26-61a-201(3)(c).

(d) If the limited medical provider gives the patient a written recommendation to deliver to a medical cannabis pharmacy under Subsection (1)(c)(i)(B), the limited medical provider shall ensure that the document includes all of the information that is included on a prescription the provider would issue for a controlled substance, including:

(i) the date of issuance;

(ii) the provider's name, address and contact information, controlled substance license information, and signature; and

(iii) the patient's name, address and contact information, age, and diagnosed qualifying condition.

(e) In considering making a recommendation as a limited medical provider, an individual may consult information that the department makes available on the department's website for recommending providers.

## **SB0043S07 compared with SB0043S06**

(2) (a) The department shall, within 15 days after the day on which the department receives an application from an individual, register and issue a qualified medical provider registration card to the individual if the individual:

(i) provides to the department the individual's name and address;

(ii) provides to the department a report detailing the individual's completion of the applicable continuing education requirement described in Subsection (3);

(iii) provides to the department evidence that the individual meets the recommending qualifications;

(iv) for an applicant on or after November 1, 2021, provides to the department the information described in Subsection (10)(a); and

(v) pays the department a fee in an amount that:

(A) the department sets, in accordance with Section 63J-1-504; and

(B) does not exceed \$300 for an initial registration.

(b) The department may not register an individual as a qualified medical provider if the individual is:

(i) a pharmacy medical provider; or

(ii) an owner, officer, director, board member, employee, or agent of a cannabis production establishment, a medical cannabis pharmacy, or a medical cannabis courier.

(3) (a) An individual shall complete the continuing education described in this Subsection (3) in the following amounts:

(i) for an individual as a condition precedent to registration, four hours; and

(ii) for a qualified medical provider as a condition precedent to renewal, four hours every two years.

(b) In accordance with Subsection (3)(a), a qualified medical provider shall:

(i) complete continuing education:

(A) regarding the topics described in Subsection (3)(d); and

(B) offered by the department under Subsection (3)(c) or an accredited or approved continuing education provider that the department recognizes as offering continuing education appropriate for the recommendation of cannabis to patients; and

(ii) make a continuing education report to the department in accordance with a process that the department establishes by rule, in accordance with Title 63G, Chapter 3, Utah

## SB0043S07 compared with SB0043S06

Administrative Rulemaking Act, and in collaboration with the Division of [~~Occupational and~~ Professional Licensing and:

(A) for a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act, the Podiatric Physician Board;

(B) for an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, the Board of Nursing;

(C) for a qualified medical provider licensed under Title 58, Chapter 67, Utah Medical Practice Act, the Physicians Licensing Board;

(D) for a qualified medical provider licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board; and

(E) for a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act, the Physician Assistant Licensing Board.

(c) The department may, in consultation with the Division of [~~Occupational and~~ Professional Licensing, develop the continuing education described in this Subsection (3).

(d) The continuing education described in this Subsection (3) may discuss:

(i) the provisions of this chapter;

(ii) general information about medical cannabis under federal and state law;

(iii) the latest scientific research on the endocannabinoid system and medical cannabis, including risks and benefits;

(iv) recommendations for medical cannabis as it relates to the continuing care of a patient in pain management, risk management, potential addiction, or palliative care; and

(v) best practices for recommending the form and dosage of medical cannabis products based on the qualifying condition underlying a medical cannabis recommendation.

(4) (a) Except as provided in Subsection (4)(b), a qualified medical provider may not recommend a medical cannabis treatment to more than 275 of the qualified medical provider's patients at the same time, as determined by the number of medical cannabis cards under the qualified medical provider's name in the state electronic verification system.

(b) A qualified medical provider may recommend a medical cannabis treatment to up to 600 of the qualified medical provider's patients at any given time, as determined by the number of medical cannabis cards under the qualified medical provider's name in the state electronic

## **SB0043S07 compared with SB0043S06**

verification system, if:

(i) the appropriate American medical board has certified the qualified medical provider in the specialty of anesthesiology, gastroenterology, neurology, oncology, pain, hospice and palliative medicine, physical medicine and rehabilitation, rheumatology, endocrinology, or psychiatry; or

(ii) a licensed business employs or contracts with the qualified medical provider for the specific purpose of providing hospice and palliative care.

(5) A recommending medical provider may recommend medical cannabis to an individual under this chapter only in the course of a provider-patient relationship after the recommending medical provider has completed and documented in the patient's medical record a thorough assessment of the patient's condition and medical history based on the appropriate standard of care for the patient's condition.

(6) (a) Except as provided in Subsection (6)(b), an individual may not advertise that the individual recommends medical cannabis treatment in accordance with this chapter.

(b) For purposes of Subsection (6)(a), the communication of the following, through a website, by a qualified medical provider, does not constitute advertising:

(i) a green cross;

(ii) a qualifying condition that the individual treats;

(iii) the individual's registration as a qualified medical provider; or

(iv) a scientific study regarding medical cannabis use.

(7) (a) A qualified medical provider registration card expires two years after the day on which the department issues the card.

(b) The department shall renew a qualified medical provider's registration card if the provider:

(i) applies for renewal;

(ii) is eligible for a qualified medical provider registration card under this section, including maintaining an unrestricted license under the recommending qualifications;

(iii) certifies to the department in a renewal application that the information in Subsection (2)(a) is accurate or updates the information;

(iv) submits a report detailing the completion of the continuing education requirement described in Subsection (3); and

## **SB0043S07 compared with SB0043S06**

(v) pays the department a fee in an amount that:

(A) the department sets, in accordance with Section 63J-1-504; and

(B) does not exceed \$50 for a registration renewal.

(8) The department may revoke the registration of a qualified medical provider who fails to maintain compliance with the requirements of this section.

(9) A recommending medical provider may not receive any compensation or benefit for the qualified medical provider's medical cannabis treatment recommendation from:

(a) a cannabis production establishment or an owner, officer, director, board member, employee, or agent of a cannabis production establishment;

(b) a medical cannabis pharmacy or an owner, officer, director, board member, employee, or agent of a medical cannabis pharmacy; or

(c) a recommending medical provider or pharmacy medical provider.

(10) (a) On or before November 1, 2021, a qualified medical provider shall report to the department, in a manner designated by the department:

(i) if applicable, that the qualified medical provider or the entity that employs the qualified medical provider represents online or on printed material that the qualified medical provider is a qualified medical provider or offers medical cannabis recommendations to patients; and

(ii) the fee amount that the qualified medical provider or the entity that employs the qualified medical provider charges a patient for a medical cannabis recommendation, either as an actual cash rate or, if the provider or entity bills insurance, an average cash rate.

(b) The department shall:

(i) ensure that the following information related to qualified medical providers and entities described in Subsection (10)(a)(i) is available on the department's website or on the health care price transparency tool under Subsection (10)(b)(ii):

(A) the name of the qualified medical provider and, if applicable, the name of the entity that employs the qualified medical provider;

(B) the address of the qualified medical provider's office or, if applicable, the entity that employs the qualified medical provider; and

(C) the fee amount described in Subsection (10)(a)(ii); and

(ii) share data collected under this Subsection (10) with the state auditor for use in the

## **SB0043S07 compared with SB0043S06**

health care price transparency tool described in Section 67-3-11.

Section 24. Section **26-61a-303** is amended to read:

### **26-61a-303. Renewal.**

(1) The department shall renew a license under this part every year if, at the time of renewal:

(a) the licensee meets the requirements of Section 26-61a-301;

(b) the licensee pays the department a license renewal fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and

(c) if the medical cannabis pharmacy changes the operating plan described in Section 26-61a-304 that the department approved under Subsection 26-61a-301(2)(b)(iv), the department approves the new operating plan.

(2) (a) If a licensed medical cannabis pharmacy abandons the medical cannabis pharmacy's license, the department shall publish notice of an available license:

(i) in a newspaper of general circulation for the geographic area in which the medical cannabis pharmacy license is available; or

(ii) on the Utah Public Notice Website established in Section 63A-16-601.

(b) The department may establish criteria, in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to identify the medical cannabis pharmacy actions that constitute abandonment of a medical cannabis pharmacy license.

Section 25. Section **26-61a-401** is amended to read:

### **26-61a-401. Medical cannabis pharmacy agent -- Registration.**

(1) An individual may not serve as a medical cannabis pharmacy agent of a medical cannabis pharmacy unless the department registers the individual as a medical cannabis pharmacy agent.

(2) A recommending medical provider may not act as a medical cannabis pharmacy agent, have a financial or voting interest of 2% or greater in a medical cannabis pharmacy, or have the power to direct or cause the management or control of a medical cannabis pharmacy.

(3) (a) The department shall, within 15 days after the day on which the department receives a complete application from a medical cannabis pharmacy on behalf of a prospective medical cannabis pharmacy agent, register and issue a medical cannabis pharmacy agent



## **SB0043S07 compared with SB0043S06**

registration card to the prospective agent if the medical cannabis pharmacy:

(i) provides to the department:

(A) the prospective agent's name and address;

(B) the name and location of the licensed medical cannabis pharmacy where the prospective agent seeks to act as the medical cannabis pharmacy agent; and

(C) the submission required under Subsection (3)(b); and

(ii) pays a fee to the department in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.

(b) Except for an applicant reapplying for a medical cannabis pharmacy agent registration card within less than one year after the expiration of the applicant's previous medical cannabis pharmacy agent registration card, each prospective agent described in Subsection (3)(a) shall:

(i) submit to the department:

(A) a fingerprint card in a form acceptable to the Department of Public Safety; and

(B) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the prospective agent's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service; and

(ii) consent to a fingerprint background check by:

(A) the Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(c) The Bureau of Criminal Identification shall:

(i) check the fingerprints the prospective agent submits under Subsection (3)(b) against the applicable state, regional, and national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System;

(ii) report the results of the background check to the department;

(iii) maintain a separate file of fingerprints that prospective agents submit under Subsection (3)(b) for search by future submissions to the local and regional criminal records databases, including latent prints;

(iv) request that the fingerprints be retained in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and

## SB0043S07 compared with SB0043S06

latent prints; and

(v) establish a privacy risk mitigation strategy to ensure that the department only receives notifications for an individual with whom the department maintains an authorizing relationship.

(d) The department shall:

(i) assess an individual who submits fingerprints under Subsection (3)(b) a fee in an amount that the department sets in accordance with Section 63J-1-504 for the services that the Bureau of Criminal Identification or another authorized agency provides under this section; and

(ii) remit the fee described in Subsection (3)(d)(i) to the Bureau of Criminal Identification.

(4) The department shall designate, on an individual's medical cannabis pharmacy agent registration card the name of the medical cannabis pharmacy where the individual is registered as an agent.

(5) A medical cannabis pharmacy agent shall comply with a certification standard that the department develops in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy, or a third-party certification standard that the department designates by rule, in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) The department shall ensure that the certification standard described in Subsection (5) includes training in:

- (a) Utah medical cannabis law; and
- (b) medical cannabis pharmacy best practices.

(7) The department may revoke the medical cannabis pharmacy agent registration card of, or refuse to issue a medical cannabis pharmacy agent registration card to, an individual who:

- (a) violates the requirements of this chapter; or
- (b) is convicted under state or federal law of:
  - (i) a felony; or
  - (ii) after December 3, 2018, a misdemeanor for drug distribution.

(8) (a) A medical cannabis pharmacy agent registration card expires two years after the

## SB0043S07 compared with SB0043S06

day on which the department issues or renews the card.

(b) A medical cannabis pharmacy agent may renew the agent's registration card if the agent:

(i) is eligible for a medical cannabis pharmacy agent registration card under this section;

(ii) certifies to the department in a renewal application that the information in Subsection (3)(a) is accurate or updates the information; and

(iii) pays to the department a renewal fee in an amount that:

(A) subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and

(B) may not exceed the cost of the relatively lower administrative burden of renewal in comparison to the original application process.

Section 26. Section **26-61a-403** is amended to read:

### **26-61a-403. Pharmacy medical providers -- Registration -- Continuing education.**

(1) (a) A medical cannabis pharmacy:

(i) shall employ a pharmacist who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, as a pharmacy medical provider;

(ii) may employ a physician who has the authority to write a prescription and is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as a pharmacy medical provider;

(iii) shall ensure that a pharmacy medical provider described in Subsection (1)(a)(i) works onsite during all business hours; and

(iv) shall designate one pharmacy medical provider described in Subsection (1)(a)(i) as the pharmacist-in-charge to oversee the operation of and generally supervise the medical cannabis pharmacy.

(b) An individual may not serve as a pharmacy medical provider unless the department registers the individual as a pharmacy medical provider in accordance with Subsection (2).

(2) (a) The department shall, within 15 days after the day on which the department receives an application from a medical cannabis pharmacy on behalf of a prospective pharmacy medical provider, register and issue a pharmacy medical provider registration card to the prospective pharmacy medical provider if the medical cannabis pharmacy:

## SB0043S07 compared with SB0043S06

(i) provides to the department:

(A) the prospective pharmacy medical provider's name and address;

(B) the name and location of the licensed medical cannabis pharmacy where the prospective pharmacy medical provider seeks to act as a pharmacy medical provider;

(C) a report detailing the completion of the continuing education requirement described in Subsection (3); and

(D) evidence that the prospective pharmacy medical provider is a pharmacist who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, or a physician who has the authority to write a prescription and is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

(ii) pays a fee to the department in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.

(b) The department may not register a recommending medical provider or a state central patient portal medical provider as a pharmacy medical provider.

(3) (a) A pharmacy medical provider shall complete the continuing education described in this Subsection (3) in the following amounts:

(i) as a condition precedent to registration, four hours; and

(ii) as a condition precedent to renewal of the registration, four hours every two years.

(b) In accordance with Subsection (3)(a), the pharmacy medical provider shall:

(i) complete continuing education:

(A) regarding the topics described in Subsection (3)(d); and

(B) offered by the department under Subsection (3)(c) or an accredited or approved continuing education provider that the department recognizes as offering continuing education appropriate for the medical cannabis pharmacy practice; and

(ii) make a continuing education report to the department in accordance with a process that the department establishes by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in collaboration with the Division of [~~Occupational and~~ Professional Licensing and:

(A) for a pharmacy medical provider who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, the Board of Pharmacy;

(B) for a pharmacy medical provider licensed under Title 58, Chapter 67, Utah Medical

## SB0043S07 compared with SB0043S06

Practice Act, the Physicians Licensing Board; and

(C) for a pharmacy medical provider licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board.

(c) The department may, in consultation with the Division of [~~Occupational and~~ Professional Licensing, develop the continuing education described in this Subsection (3).

(d) The continuing education described in this Subsection (3) may discuss:

(i) the provisions of this chapter;

(ii) general information about medical cannabis under federal and state law;

(iii) the latest scientific research on the endocannabinoid system and medical cannabis, including risks and benefits;

(iv) recommendations for medical cannabis as it relates to the continuing care of a patient in pain management, risk management, potential addiction, and palliative care; or

(v) best practices for recommending the form and dosage of a medical cannabis product based on the qualifying condition underlying a medical cannabis recommendation.

(4) (a) A pharmacy medical provider registration card expires two years after the day on which the department issues or renews the card.

(b) A pharmacy medical provider may renew the provider's registration card if the provider:

(i) is eligible for a pharmacy medical provider registration card under this section;

(ii) certifies to the department in a renewal application that the information in Subsection (2)(a) is accurate or updates the information;

(iii) submits a report detailing the completion of the continuing education requirement described in Subsection (3); and

(iv) pays to the department a renewal fee in an amount that:

(A) subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and

(B) may not exceed the cost of the relatively lower administrative burden of renewal in comparison to the original application process.

(5) (a) Except as provided in Subsection (5)(b), an individual may not advertise that the individual dispenses medical cannabis.

(b) For purposes of this Subsection (5), the communication of the following, through a

## **SB0043S07 compared with SB0043S06**

website, by a pharmacy medical provider, does not constitute advertising:

- (i) a green cross;
- (ii) the individual's registration as a pharmacy medical provider; or
- (iii) a scientific study regarding medical cannabis use.

Section 27. Section **26-61a-501** is amended to read:

### **26-61a-501. Operating requirements -- General.**

(1) (a) A medical cannabis pharmacy shall operate:

- (i) at the physical address provided to the department under Section 26-61a-301; and
- (ii) in accordance with the operating plan provided to the department under Section 26-61a-301 and, if applicable, 26-61a-304.

(b) A medical cannabis pharmacy shall notify the department before a change in the medical cannabis pharmacy's physical address or operating plan.

(2) An individual may not enter a medical cannabis pharmacy unless the individual:

- (a) is at least 18 years old or is an emancipated minor under Section 80-7-105; and
- (b) except as provided in Subsection (5):

(i) possesses a valid:

- (A) medical cannabis pharmacy agent registration card;
- (B) pharmacy medical provider registration card; or
- (C) medical cannabis card;

(ii) is an employee of the department or the Department of Agriculture and Food performing an inspection under Section 26-61a-504; or

(iii) is another individual as the department provides.

(3) A medical cannabis pharmacy may not employ an individual who is younger than 21 years old.

(4) A medical cannabis pharmacy may not employ an individual who has been convicted of a felony under state or federal law.

(5) Notwithstanding Subsection (2)(a), a medical cannabis pharmacy may authorize an individual who is not a medical cannabis pharmacy agent or pharmacy medical provider to access the medical cannabis pharmacy if the medical cannabis pharmacy tracks and monitors the individual at all times while the individual is at the medical cannabis pharmacy and maintains a record of the individual's access.

## **SB0043S07 compared with SB0043S06**

(6) A medical cannabis pharmacy shall operate in a facility that has:

(a) a single, secure public entrance;

(b) a security system with a backup power source that:

(i) detects and records entry into the medical cannabis pharmacy; and

(ii) provides notice of an unauthorized entry to law enforcement when the medical cannabis pharmacy is closed; and

(c) a lock on each area where the medical cannabis pharmacy stores cannabis or a cannabis product.

(7) A medical cannabis pharmacy shall post, both clearly and conspicuously in the medical cannabis pharmacy, the limit on the purchase of cannabis described in Subsection 26-61a-502(2).

(8) Except for an emergency situation described in Subsection 26-61a-201(3)(c), a medical cannabis pharmacy may not allow any individual to consume cannabis on the property or premises of the medical cannabis pharmacy.

(9) A medical cannabis pharmacy may not sell cannabis or a cannabis product without first indicating on the cannabis or cannabis product label the name of the medical cannabis pharmacy.

(10) (a) Each medical cannabis pharmacy shall retain in the pharmacy's records the following information regarding each recommendation underlying a transaction:

(i) the recommending medical provider's name, address, and telephone number;

(ii) the patient's name and address;

(iii) the date of issuance;

(iv) directions of use and dosing guidelines or an indication that the recommending medical provider did not recommend specific directions of use or dosing guidelines; and

(v) if the patient did not complete the transaction, the name of the medical cannabis cardholder who completed the transaction.

(b) (i) Except as provided in Subsection (10)(b)(iii), a medical cannabis pharmacy may not sell medical cannabis unless the medical cannabis has a label securely affixed to the container indicating the following minimum information:

(A) the name, address, and telephone number of the medical cannabis pharmacy;

(B) the unique identification number that the medical cannabis pharmacy assigns;

## SB0043S07 compared with SB0043S06

(C) the date of the sale;  
(D) the name of the patient;  
(E) the name of the recommending medical provider who recommended the medical cannabis treatment;

(F) directions for use and cautionary statements, if any;

(G) the amount dispensed and the cannabinoid content;

(H) the suggested use date;

(I) for unprocessed cannabis flower, the legal use termination date; and

(J) any other requirements that the department determines, in consultation with the Division of ~~Occupational and~~ Professional Licensing and the Board of Pharmacy.

(ii) A medical cannabis pharmacy is exempt from the following labeling requirements if the information is already provided on the product label that a cannabis production establishment affixes:

(A) Subsection (10)(b)(i)(B) regarding a unique identification number;

(B) Subsection (10)(b)(i)(F) regarding directions for use and cautionary statements;

(C) Subsection (10)(b)(i)(G) regarding amount and cannabinoid content; and

(D) Subsection (10)(b)(i)(H) regarding a suggested use date.

(iii) A medical cannabis pharmacy may sell medical cannabis to another medical cannabis pharmacy without a label described in Subsection (10)(b)(i).

(11) A pharmacy medical provider or medical cannabis pharmacy agent shall:

(a) upon receipt of an order from a limited medical provider in accordance with Subsections 26-61a-106(1)(b) and (c):

(i) for a written order, contact the limited medical provider or the limited medical provider's office to verify the validity of the recommendation; and

(ii) for a written order that the pharmacy medical provider or medical cannabis pharmacy agent verifies under Subsection (11)(a)(i) or an electronic order, enter the limited medical provider's recommendation or renewal, including any associated directions of use, dosing guidelines, or caregiver indication, in the state electronic verification system;

(b) in processing an order for a holder of a conditional medical cannabis card described in Subsection 26-61a-201(1)(b) that appears irregular or suspicious in the judgment of the pharmacy medical provider or medical cannabis pharmacy agent, contact the recommending



## SB0043S07 compared with SB0043S06

medical provider or the recommending medical provider's office to verify the validity of the recommendation before processing the cardholder's order;

(c) unless the medical cannabis cardholder has had a consultation under Subsection 26-61a-502(4) or (5), verbally offer to a medical cannabis cardholder at the time of a purchase of cannabis, a cannabis product, or a medical cannabis device, personal counseling with the pharmacy medical provider; and

(d) provide a telephone number or website by which the cardholder may contact a pharmacy medical provider for counseling.

(12) (a) A medical cannabis pharmacy may create a medical cannabis disposal program that allows an individual to deposit unused or excess medical cannabis, cannabis residue from a medical cannabis device, or medical cannabis product in a locked box or other secure receptacle within the medical cannabis pharmacy.

(b) A medical cannabis pharmacy with a disposal program described in Subsection (12)(a) shall ensure that only a medical cannabis pharmacy agent or pharmacy medical provider can access deposited medical cannabis or medical cannabis products.

(c) A medical cannabis pharmacy shall dispose of any deposited medical cannabis or medical cannabis products by:

(i) rendering the deposited medical cannabis or medical cannabis products unusable and unrecognizable before transporting deposited medical cannabis or medical cannabis products from the medical cannabis pharmacy; and

(ii) disposing of the deposited medical cannabis or medical cannabis products in accordance with:

(A) federal and state law, rules, and regulations related to hazardous waste;

(B) the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.;

(C) Title 19, Chapter 6, Part 5, Solid Waste Management Act; and

(D) other regulations that the department makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(13) The department shall establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for a recall of cannabis and cannabis products by a medical cannabis pharmacy.

Section 28. Section **26-61a-503** is amended to read:

## **SB0043S07 compared with SB0043S06**

### **26-61a-503. Partial filling.**

(1) As used in this section, "partially fill" means to provide less than the full amount of cannabis or cannabis product that the recommending medical provider recommends, if the recommending medical provider recommended specific dosing parameters.

(2) A pharmacy medical provider may partially fill a recommendation for a medical cannabis treatment at the request of the recommending medical provider who issued the medical cannabis treatment recommendation or the medical cannabis cardholder.

(3) The department shall make rules, in collaboration with the Division of ~~Occupational and~~ Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying how to record the date, quantity supplied, and quantity remaining of a partially filled medical cannabis treatment recommendation.

(4) A pharmacy medical provider who is a pharmacist may, upon the request of a medical cannabis cardholder, determine different dosing parameters, subject to the dosing limits in Subsection 26-61a-502(2), to fill the quantity remaining of a partially filled medical cannabis treatment recommendation if:

(a) the pharmacy medical provider determined dosing parameters for the partial fill under Subsection 26-61a-502(4) or (5); and

(b) the medical cannabis cardholder reports that:

(i) the partial fill did not substantially affect the qualifying condition underlying the medical cannabis recommendation; or

(ii) the patient experienced an adverse reaction to the partial fill or was otherwise unable to successfully use the partial fill.

Section 29. Section **26-61a-506** is amended to read:

### **26-61a-506. Medical cannabis transportation.**

(1) Only the following individuals may transport medical cannabis under this chapter:

(a) a registered medical cannabis pharmacy agent;

(b) a registered medical cannabis courier agent;

(c) a registered pharmacy medical provider; or

(d) a medical cannabis cardholder who is transporting a medical cannabis treatment that the cardholder is authorized to transport.

## SB0043S07 compared with SB0043S06

(2) Except for an individual with a valid medical cannabis card under this chapter who is transporting a medical cannabis treatment that the cardholder is authorized to transport, an individual described in Subsection (1) shall possess a transportation manifest that:

(a) includes a unique identifier that links the cannabis or cannabis product to a relevant inventory control system;

(b) includes origin and destination information for the medical cannabis that the individual is transporting; and

(c) identifies the departure and arrival times and locations of the individual transporting the medical cannabis.

(3) (a) In addition to the requirements in Subsections (1) and (2), the department may establish by rule, in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements for transporting medical cannabis to ensure that the medical cannabis remains safe for human consumption.

(b) The transportation described in Subsection (1)(a) is limited to transportation between a medical cannabis pharmacy and:

(i) another medical cannabis pharmacy; or

(ii) for a medical cannabis shipment, a medical cannabis cardholder's home address.

(4) (a) It is unlawful for an individual described in Subsection (1) to make a transport described in this section with a manifest that does not meet the requirements of this section.

(b) Except as provided in Subsection (4)(d), an individual who violates Subsection (4)(a) is:

(i) guilty of an infraction; and

(ii) subject to a \$100 fine.

(c) An individual who is guilty of a violation described in Subsection (4)(b) is not guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct underlying the violation described in Subsection (4)(b).

(d) If the individual described in Subsection (4)(a) is transporting more medical cannabis than the manifest identifies, except for a de minimis administrative error:

(i) this chapter does not apply; and

(ii) the individual is subject to penalties under Title 58, Chapter 37, Utah Controlled

## SB0043S07 compared with SB0043S06

Substances Act.

(5) An individual other than an individual described in Subsection (1) may transport a medical cannabis device within the state if the transport does not also contain medical cannabis.

Section 30. Section **26-61a-605** is amended to read:

### **26-61a-605. Medical cannabis shipment transportation.**

(1) The department shall ensure that each home delivery medical cannabis pharmacy is capable of delivering, directly or through a medical cannabis courier, medical cannabis shipments in a secure manner.

(2) (a) A home delivery medical cannabis pharmacy may contract with a licensed medical cannabis courier to deliver medical cannabis shipments to fulfill electronic medical cannabis orders that the state central patient portal facilitates.

(b) If a home delivery medical cannabis pharmacy enters into a contract described in Subsection (2)(a), the pharmacy shall:

(i) impose security and personnel requirements on the medical cannabis courier sufficient to ensure the security and safety of medical cannabis shipments; and

(ii) provide regular oversight of the medical cannabis courier.

(3) Except for an individual with a valid medical cannabis card who transports a shipment the individual receives, an individual may not transport a medical cannabis shipment unless the individual is:

(a) a registered pharmacy medical provider;

(b) a registered medical cannabis pharmacy agent; or

(c) a registered agent of the medical cannabis courier described in Subsection (2).

(4) An individual transporting a medical cannabis shipment under Subsection (3) shall possess a physical or electronic transportation manifest that:

(a) includes a unique identifier that links the medical cannabis shipment to a relevant inventory control system;

(b) includes origin and destination information for the medical cannabis shipment the individual is transporting; and

(c) indicates the departure and estimated arrival times and locations of the individual transporting the medical cannabis shipment.

## SB0043S07 compared with SB0043S06

(5) In addition to the requirements in Subsections (3) and (4), the department may establish by rule, in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements for transporting medical cannabis shipments that are related to safety for human consumption of cannabis or a cannabis product.

(6) (a) It is unlawful for an individual to transport a medical cannabis shipment with a manifest that does not meet the requirements of Subsection (4).

(b) Except as provided in Subsection (6)(d), an individual who violates Subsection (6)(a) is:

- (i) guilty of an infraction; and
- (ii) subject to a \$100 fine.

(c) An individual who is guilty of a violation described in Subsection (6)(b) is not guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct underlying the violation described in Subsection (6)(b).

(d) If the individual described in Subsection (6)(a) is transporting more cannabis, cannabis product, or medical cannabis devices than the manifest identifies, except for a de minimis administrative error:

- (i) this chapter does not apply; and
- (ii) the individual is subject to penalties under Title 58, Chapter 37, Utah Controlled Substances Act.

Section 31. Section **26-61a-606** is amended to read:

**26-61a-606. Medical cannabis courier agent -- Background check -- Registration card -- Rebuttable presumption.**

(1) An individual may not serve as a medical cannabis courier agent unless:

- (a) the individual is an employee of a licensed medical cannabis courier; and
- (b) the department registers the individual as a medical cannabis courier agent.

(2) (a) The department shall, within 15 days after the day on which the department receives a complete application from a medical cannabis courier on behalf of a medical cannabis courier agent, register and issue a medical cannabis courier agent registration card to the prospective agent if the medical cannabis courier:

- (i) provides to the department:

## **SB0043S07 compared with SB0043S06**

- (A) the prospective agent's name and address;
  - (B) the name and address of the medical cannabis courier;
  - (C) the name and address of each home delivery medical cannabis pharmacy with which the medical cannabis courier contracts to deliver medical cannabis shipments; and
  - (D) the submission required under Subsection (2)(b);
- (ii) as reported under Subsection (2)(c), has not been convicted under state or federal law of:

- (A) a felony; or
  - (B) after December 3, 2018, a misdemeanor for drug distribution; and
- (iii) pays the department a fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.

(b) Except for an applicant reapplying for a medical cannabis courier agent registration card within less than one year after the expiration of the applicant's previous medical cannabis courier agent registration card, each prospective agent described in Subsection (2)(a) shall:

- (i) submit to the department:
  - (A) a fingerprint card in a form acceptable to the Department of Public Safety; and
  - (B) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the prospective agent's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service; and
- (ii) consent to a fingerprint background check by:
  - (A) the Bureau of Criminal Identification; and
  - (B) the Federal Bureau of Investigation.
- (c) The Bureau of Criminal Identification shall:
  - (i) check the fingerprints the prospective agent submits under Subsection (2)(b) against the applicable state, regional, and national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System;
  - (ii) report the results of the background check to the department;
  - (iii) maintain a separate file of fingerprints that prospective agents submit under Subsection (2)(b) for search by future submissions to the local and regional criminal records databases, including latent prints;
  - (iv) request that the fingerprints be retained in the Federal Bureau of Investigation Next

## SB0043S07 compared with SB0043S06

Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and latent prints; and

(v) establish a privacy risk mitigation strategy to ensure that the department only receives notifications for an individual with whom the department maintains an authorizing relationship.

(d) The department shall:

(i) assess an individual who submits fingerprints under Subsection (2)(b) a fee in an amount that the department sets in accordance with Section 63J-1-504 for the services that the Bureau of Criminal Identification or another authorized agency provides under this section; and

(ii) remit the fee described in Subsection (2)(d)(i) to the Bureau of Criminal Identification.

(3) The department shall designate on an individual's medical cannabis courier agent registration card the name of the medical cannabis pharmacy where the individual is registered as an agent and each home delivery medical cannabis courier for which the medical cannabis courier delivers medical cannabis shipments.

(4) (a) A medical cannabis courier agent shall comply with a certification standard that the department develops, in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy, or a third-party certification standard that the department designates by rule in collaboration with the Division of [~~Occupational and~~] Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The department shall ensure that the certification standard described in Subsection (4)(a) includes training in:

(i) Utah medical cannabis law;

(ii) the medical cannabis shipment process; and

(iii) medical cannabis courier agent best practices.

(5) (a) A medical cannabis courier agent registration card expires two years after the day on which the department issues or renews the card.

(b) A medical cannabis courier agent may renew the agent's registration card if the agent:

## **SB0043S07 compared with SB0043S06**

- (i) is eligible for a medical cannabis courier agent registration card under this section;
- (ii) certifies to the department in a renewal application that the information in Subsection (2)(a) is accurate or updates the information; and
- (iii) pays to the department a renewal fee in an amount that:
  - (A) subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and
  - (B) may not exceed the cost of the relatively lower administrative burden of renewal in comparison to the original application process.
- (6) The department may revoke or refuse to issue or renew the medical cannabis courier agent registration card of an individual who:
  - (a) violates the requirements of this chapter; or
  - (b) is convicted under state or federal law of:
    - (i) a felony; or
    - (ii) after December 3, 2018, a misdemeanor for drug distribution.
- (7) A medical cannabis courier agent whom the department has registered under this section shall carry the agent's medical cannabis courier agent registration card with the agent at all times when:
  - (a) the agent is on the premises of the medical cannabis courier, a medical cannabis pharmacy, or a medical cannabis cardholder's home address; and
  - (b) the agent is handling a medical cannabis shipment.
- (8) If a medical cannabis courier agent handling a medical cannabis shipment possesses the shipment in compliance with Subsection (7):
  - (a) there is a rebuttable presumption that the agent possesses the shipment legally; and
  - (b) there is no probable cause, based solely on the agent's possession of the medical cannabis shipment that the agent is engaging in illegal activity.
- (9) (a) A medical cannabis courier agent who violates Subsection (7) is:
  - (i) guilty of an infraction; and
  - (ii) subject to a \$100 fine.
- (b) An individual who is guilty of a violation described in Subsection (9)(a) is not guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct underlying the violation described in Subsection (9)(a).



## **SB0043S07 compared with SB0043S06**

Section 32. Section **26-64-102** is amended to read:

### **26-64-102. Definitions.**

As used in this chapter:

- (1) "Dispense" means the same as that term is defined in Section 58-17b-102.
- (2) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103.
- (3) "Local health department" means:
  - (a) a local health department, as defined in Section 26A-1-102; or
  - (b) a multicounty local health department, as defined in Section 26A-1-102.
- (4) "Patient counseling" means the same as that term is defined in Section 58-17b-102.
- (5) "Pharmacist" means the same as that term is defined in Section 58-17b-102.
- (6) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.
- (7) "Physician" means the same as that term is defined in Section 58-67-102.
- (8) "Prescribe" means the same as that term is defined in Section 58-17b-102.
- (9) (a) "Self-administered hormonal contraceptive" means a self-administered hormonal contraceptive that is approved by the United States Food and Drug Administration to prevent pregnancy.
  - (b) "Self-administered hormonal contraceptive" includes an oral hormonal contraceptive, a hormonal vaginal ring, and a hormonal contraceptive patch.
  - (c) "Self-administered hormonal contraceptive" does not include any drug intended to induce an abortion, as that term is defined in Section 76-7-301.

Section 33. Section **26A-1-113** is amended to read:

### **26A-1-113. Right of entry to regulated premises by representatives for inspection.**

- (1) Upon presenting proper identification, authorized representatives of local health departments may enter upon the premises of properties regulated by local health departments to perform routine inspections to insure compliance with rules, standards, regulations, and ordinances as adopted by the Departments of Health and Environmental Quality, local boards of health, county or municipal governing bodies, or administered by the Division of [~~Occupational and~~] Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction Code Administration Act.
- (2) Section 58-56-9 does not apply to health inspectors acting under this section.

## SB0043S07 compared with SB0043S06

(3) This section does not authorize local health departments to inspect private dwellings.

Section 34. Section **26A-1-114** is amended to read:

### **26A-1-114. Powers and duties of departments.**

(1) Subject to Subsections (7) and (8), a local health department may:

(a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and sanitation, including the plumbing code administered by the Division of [~~Occupational and~~] Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction Code Administration Act, and under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas served by the local health department;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law which:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on [its] the local health department's own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

## **SB0043S07 compared with SB0043S06**

(h) pursuant to county ordinance or interlocal agreement:

(i) establish and collect appropriate fees for the performance of services and operation of authorized or required programs and duties;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law which are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards;

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders, convicted sexual offenders, and any victims of a sexual offense;

(o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

(p) provide public health assistance in response to 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.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

## **SB0043S07 compared with SB0043S06**

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of alleged sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan which:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within ~~[its]~~ the local health department's boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance; and

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

## **SB0043S07 compared with SB0043S06**

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

(6) Nothing in this part may be construed to authorize a local health department to enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon monoxide detector in a residential dwelling against anyone other than the occupant of the dwelling.

(7) (a) Except as provided in Subsection (7)(c), a local health department may not declare a public health emergency or issue an order of constraint until the local health department has provided notice of the proposed action to the chief executive officer of the relevant county no later than 24 hours before the local health department issues the order or declaration.

(b) The local health department:

(i) shall provide the notice required by Subsection (7)(a) using the best available method under the circumstances as determined by the local health department;

(ii) may provide the notice required by Subsection (7)(a) in electronic format; and

(iii) shall provide the notice in written form, if practicable.

(c) (i) Notwithstanding Subsection (7)(a), a local health department may declare a public health emergency or issue an order of constraint without approval of the chief executive officer of the relevant county if the passage of time necessary to obtain approval of the chief executive officer of the relevant county as required in Subsection (7)(a) would substantially increase the likelihood of loss of life due to an imminent threat.

(ii) If a local health department declares a public health emergency or issues an order of constraint as described in Subsection (7)(c)(i), the local health department shall notify the chief executive officer of the relevant county before issuing the order of constraint.

(iii) The chief executive officer of the relevant county may terminate a declaration of a public health emergency or an order of constraint issued as described in Subsection (7)(c)(i)

## **SB0043S07 compared with SB0043S06**

within 72 hours of declaration of the public health emergency or issuance of the order of constraint.

(d) The relevant county governing body may at any time terminate a public health emergency or an order of constraint issued by the local health department by majority vote of the county governing body in response to a declared public health emergency.

(8) (a) Except as provided in Subsection (8)(b), a public health emergency declared by a local health department expires at the earliest of:

(i) the local health department or the chief executive officer of the relevant county finding that the threat or danger has passed or the public health emergency reduced to the extent that emergency conditions no longer exist;

(ii) 30 days after the date on which the local health department declared the public health emergency; or

(iii) the day on which the public health emergency is terminated by majority vote of the county governing body.

(b) (i) The relevant county legislative body, by majority vote, may extend a public health emergency for a time period designated by the county legislative body.

(ii) If the county legislative body extends a public health emergency as described in Subsection (8)(b)(i), the public health emergency expires on the date designated by the county legislative body.

(c) Except as provided in Subsection (8)(d), if a public health emergency declared by a local health department expires as described in Subsection (8)(a), the local health department may not declare a public health emergency for the same illness or occurrence that precipitated the previous public health emergency declaration.

(d) (i) Notwithstanding Subsection (8)(c), subject to Subsection (8)(f), if the local health department finds that exigent circumstances exist, after providing notice to the county legislative body, the department may declare a new public health emergency for the same illness or occurrence that precipitated a previous public health emergency declaration.

(ii) A public health emergency declared as described in Subsection (8)(d)(i) expires in accordance with Subsection (8)(a) or (b).

(e) For a public health emergency declared by a local health department under this chapter or under Title 26, Chapter 23b, Detection of Public Health Emergencies Act, the

## **SB0043S07 compared with SB0043S06**

Legislature may terminate by joint resolution a public health emergency that was declared based on exigent circumstances or that has been in effect for more than 30 days.

(f) If the Legislature or county legislative body terminates a public health emergency declared due to exigent circumstances as described in Subsection (8)(d)(i), the local health department may not declare a new public health emergency for the same illness, occurrence, or exigent circumstances.

(9) (a) During a public health emergency declared under this chapter or under Title 26, Chapter 23b, Detection of Public Health Emergencies Act:

(i) except as provided in Subsection (9)(b), a local health department may not issue an order of constraint without approval of the chief executive officer of the relevant county;

(ii) the Legislature may at any time terminate by joint resolution an order of constraint issued by a local health department in response to a declared public health emergency that has been in effect for more than 30 days; and

(iii) a county governing body may at any time terminate by majority vote of the governing body an order of constraint issued by a local health department in response to a declared public health emergency.

(b) (i) Notwithstanding Subsection (9)(a)(i), a local health department may issue an order of constraint without approval of the chief executive officer of the relevant county if the passage of time necessary to obtain approval of the chief executive officer of the relevant county as required in Subsection (9)(a)(i) would substantially increase the likelihood of loss of life due to an imminent threat.

(ii) If a local health department issues an order of constraint as described in Subsection (9)(b), the local health department shall notify the chief executive officer of the relevant county before issuing the order of constraint.

(iii) The chief executive officer of the relevant county may terminate an order of constraint issued as described in Subsection (9)(b) within 72 hours of issuance of the order of constraint.

(c) (i) For a local health department that serves more than one county, the approval described in Subsection (9)(a)(i) is required for the chief executive officer for which the order of constraint is applicable.

(ii) For a local health department that serves more than one county, a county governing

## SB0043S07 compared with SB0043S06

body may only terminate an order of constraint as described in Subsection (9)(a)(iii) for the county served by the county governing body.

(10) (a) During a public health emergency declared as described in this title:

(i) the department or a local health department may not impose an order of constraint on a religious gathering that is more restrictive than an order of constraint that applies to any other relevantly similar gathering; and

(ii) an individual, while acting or purporting to act within the course and scope of the individual's official department or local health department capacity, may not:

(A) prevent a religious gathering that is held in a manner consistent with any order of constraint issued pursuant to this title; or

(B) impose a penalty for a previous religious gathering that was held in a manner consistent with any order of constraint issued pursuant to this title.

(b) Upon proper grounds, a court of competent jurisdiction may grant an injunction to prevent the violation of this Subsection (10).

(c) During a public health emergency declared as described in this title, the department or a local health department shall not issue a public health order or impose or implement a regulation that substantially burdens an individual's exercise of religion unless the department or local health department demonstrates that the application of the burden to the individual:

(i) is in furtherance of a compelling government interest; and

(ii) is the least restrictive means of furthering that compelling government interest.

(d) Notwithstanding Subsections (8)(a) and (c), the department or a local health department shall allow reasonable accommodations for an individual to perform or participate in a religious practice or rite.

Section 35. Section **26A-1-126** is amended to read:

### **26A-1-126. Medical reserve corps.**

(1) In addition to the duties listed in Section 26A-1-114, a local health department may establish a medical reserve corps in accordance with this section.

(2) The purpose of a medical reserve corps is to enable a local health authority to respond with appropriate health care professionals to 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.



## SB0043S07 compared with SB0043S06

(3) (a) A local health department may train health care professionals who participate in a medical reserve corps to respond to an emergency or declaration for public health related activities pursuant to Subsection (2).

(b) When an emergency or request for public health related activities has been declared in accordance with Subsection (2), a local health department may activate a medical reserve corps for the duration of the emergency or declaration for public health related activities.

(4) For purposes of this section, a medical reserve corps may include persons who:

(a) are licensed under Title 58, Occupations and Professions, and who are operating within the scope of their practice;

(b) are exempt from licensure, or operating under modified scope of practice provisions in accordance with Subsections 58-1-307(4) and (5); and

(c) within the 10 years preceding the declared emergency, held a valid license, in good standing in Utah, for one of the occupations described in Subsection 58-13-2(1), but the license is not currently active.

(5) (a) Notwithstanding the provisions of Subsections 58-1-307(4)(a) and (5)(b) the local health department may authorize a person described in Subsection (4) to operate in a modified scope of practice as necessary to respond to the declaration under Subsection (2).

(b) A person operating as a member of an activated medical reserve corps or training as a member of a medical reserve corps under this section:

(i) shall be volunteering for and supervised by the local health department;

(ii) shall comply with the provisions of this section;

(iii) is exempt from the licensing laws of Title 58, Occupations and Professions; and

(iv) shall carry a certificate issued by the local health department which designates the individual as a member of the medical reserve corps during the duration of the emergency or declaration for public health related activities pursuant to Subsection (2).

(6) The local department of health may access the Division of [~~Occupational and~~] Professional Licensing database for the purpose of determining if a person's current or expired license to practice in the state was in good standing.

(7) The local department of health shall maintain a registry of persons who are members of a medical reserve corps. The registry of the medical reserve corps shall be made available to the public and to the Division of [~~Occupational and~~] Professional Licensing.

## **SB0043S07 compared with SB0043S06**

Section 36. Section **31A-22-642** is amended to read:

### **31A-22-642. Insurance coverage for autism spectrum disorder.**

(1) As used in this section:

(a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(b) "Autism spectrum disorder" means pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(c) "Behavioral health treatment" means counseling and treatment programs, including applied behavior analysis, that are:

(i) necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and

(ii) provided or supervised by a:

(A) board certified behavior analyst; or

(B) person licensed under Title 58, Chapter 1, Division of [~~Occupational and~~ Professional Licensing Act, whose scope of practice includes mental health services.

(d) "Diagnosis of autism spectrum disorder" means medically necessary assessments, evaluations, or tests:

(i) performed by a licensed physician who is board certified in neurology, psychiatry, or pediatrics and has experience diagnosing autism spectrum disorder, or a licensed psychologist with experience diagnosing autism spectrum disorder; and

(ii) necessary to diagnose whether an individual has an autism spectrum disorder.

(e) "Pharmacy care" means medications prescribed by a licensed physician and any health-related services considered medically necessary to determine the need or effectiveness of the medications.

(f) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

(g) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

## **SB0043S07 compared with SB0043S06**

(h) "Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists.

(i) "Treatment for autism spectrum disorder":

(i) means evidence-based care and related equipment prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a physician or a licensed psychologist described in Subsection (1)(d) who determines the care to be medically necessary; and

(ii) includes:

(A) behavioral health treatment, provided or supervised by a person described in Subsection (1)(c)(ii);

(B) pharmacy care;

(C) psychiatric care;

(D) psychological care; and

(E) therapeutic care.

(2) (a) Notwithstanding the provisions of Section 31A-22-618.5, a health benefit plan offered in the individual market or the large group market and entered into or renewed on or after January 1, 2016, and before January 1, 2020, shall provide coverage for the diagnosis and treatment of autism spectrum disorder:

(i) for a child who is at least two years old, but younger than 10 years old; and

(ii) in accordance with the requirements of this section and rules made by the commissioner.

(b) Notwithstanding the provisions of Section 31A-22-618.5, a health benefit plan offered in the individual market or the large group market and entered into or renewed on or after January 1, 2020, shall provide coverage for the diagnosis and treatment of autism spectrum disorder in accordance with the requirements of this section and rules made by the commissioner.

(3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to set the minimum standards of coverage for the treatment of autism spectrum disorder.

(4) Subject to Subsection (5), the rules described in Subsection (3) shall establish durational limits, amount limits, deductibles, copayments, and coinsurance for the treatment of

## **SB0043S07 compared with SB0043S06**

autism spectrum disorder that are similar to, or identical to, the coverage provided for other illnesses or diseases.

(5) (a) Coverage for behavioral health treatment for a person with an autism spectrum disorder shall cover at least 600 hours a year.

(b) Notwithstanding Subsection (5)(a), for a health benefit plan offered in the individual market or the large group market and entered into or renewed on or after January 1, 2020, coverage for behavioral health treatment for a person with an autism spectrum disorder may not have a limit on the number of hours covered.

(c) Other terms and conditions in the health benefit plan that apply to other benefits covered by the health benefit plan apply to coverage required by this section.

(d) Notwithstanding Section 31A-45-303, a health benefit plan providing treatment under Subsections (5)(a) and (b) shall include in the plan's provider network both board certified behavior analysts and mental health providers qualified under Subsection (1)(c)(ii).

(6) A health care provider shall submit a treatment plan for autism spectrum disorder to the insurer within 14 business days of starting treatment for an individual. If an individual is receiving treatment for an autism spectrum disorder, an insurer shall have the right to request a review of that treatment not more than once every three months. A review of treatment under this Subsection (6) may include a review of treatment goals and progress toward the treatment goals. If an insurer makes a determination to stop treatment as a result of the review of the treatment plan under this subsection, the determination of the insurer may be reviewed under Section 31A-22-629.

Section 37. Section **32B-4-305** is amended to read:

### **32B-4-305. Additional criminal penalties.**

(1) (a) As used in this section, "business entity" means a corporation, partnership, association, limited liability company, or similar entity.

(b) In addition to the penalties provided in Title 76, Chapter 3, Punishments, this section applies.

(2) Upon a defendant's conviction of an offense defined in this title, the court may order the defendant to pay restitution or costs in accordance with Subsection 76-3-201(4).

(3) (a) Upon a business entity's conviction of an offense defined in this title, and a failure of the business entity to pay a fine imposed upon it:

## SB0043S07 compared with SB0043S06

(i) if [it] the business entity is a domestic business entity, the powers, rights, and privileges of the business entity may be suspended or revoked; and

(ii) if [it] the business entity is a foreign business entity, it forfeits its right to do intrastate business in this state.

(b) The department shall transmit the name of a business entity described in Subsection (3)(a) to the Division of Corporations and Commercial Code. Upon receipt of the information, the Division of Corporations and Commercial Code shall immediately record the action in a manner that makes the information available to the public.

(c) A suspension, revocation, or forfeiture under this Subsection (3) is effective from the day on which the Division of Corporations and Commercial Code records the information.

(d) A certificate of the Division of Corporations and Commercial Code is prima facie evidence of a suspension, revocation, or forfeiture.

(e) This section may not be construed as affecting, limiting, or restricting a proceeding that otherwise may be taken for the imposition of any other punishment or the modes of enforcement or recovery of fines or penalties.

(4) (a) Upon the conviction of a business entity required to have a business license to operate [its] the business entity's activities, or upon the conviction of any of [its] the business entity's staff of any offense defined in this title, with the knowledge, consent, or acquiescence of the business entity, the department shall forward a copy of the judgment of conviction to the appropriate governmental entity responsible for issuing and revoking the business license.

(b) A governmental entity that receives a copy of a judgment under this Subsection (4) may institute appropriate proceedings to revoke the business license.

(c) Upon revocation under this Subsection (4), a governmental entity may not issue a business license to the business entity for at least one year from the date of revocation.

(d) Upon the conviction for a second or other offense, the governmental entity may not issue a business license for at least two years from the date of revocation.

(5) (a) Upon conviction of one of the following of an offense defined in this title, the department shall forward a certified copy of the judgment of conviction to the Division of [~~Occupational and~~] Professional Licensing:

(i) a health care practitioner; or

(ii) an individual licensed as a veterinarian under Title 58, Chapter 28, Veterinary

## SB0043S07 compared with SB0043S06

Practice Act.

(b) The Division of [~~Occupational and~~] Professional Licensing may bring a proceeding in accordance with Title 58, Occupations and Professions, to revoke the license issued under Title 58, Occupations and Professions, of an individual described in Subsection (5)(a).

(c) Upon revocation of a license under Subsection (5)(b):

(i) the Division of [~~Occupational and~~] Professional Licensing may not issue a license to the individual under Title 58, Occupations and Professions, for at least one year from the date of revocation; and

(ii) if the individual is convicted of a second or subsequent offense, the Division of [~~Occupational and~~] Professional Licensing may not issue a license to the individual under Title 58, Occupations and Professions, for at least two years from the date of revocation.

Section 38. Section **34-38-13** is amended to read:

### **34-38-13. Confidentiality of test-related information.**

(1) For purposes of this section, "test-related information" means the following received by the employer through the employer's drug or alcohol testing program:

- (a) information;
- (b) interviews;
- (c) reports;
- (d) statements;
- (e) memoranda; or
- (f) test results.

(2) Except as provided in Subsections (3) and (6), test-related information is a confidential communication and may not be:

- (a) used or received in evidence;
- (b) obtained in discovery; or
- (c) disclosed in any public or private proceeding.

(3) Test-related information:

(a) shall be disclosed to the Division of [~~Occupational and~~] Professional Licensing:

- (i) in the manner provided in Subsection 58-13-5(3); and
- (ii) only to the extent required under Subsection 58-13-5(3); and
- (b) may only be used in a proceeding related to:

## SB0043S07 compared with SB0043S06

(i) an action taken by the Division of [~~Occupational and~~] Professional Licensing under Section 58-1-401 when the Division of [~~Occupational and~~] Professional Licensing is taking action in whole or in part on the basis of test-related information disclosed under Subsection (3)(a);

(ii) an action taken by an employer under Section 34-38-8; or

(iii) an action under Section 34-38-11.

(4) Test-related information shall be the property of the employer.

(5) An employer is entitled to use a drug or alcohol test result as a basis for action under Section 34-38-8.

(6) An employer may not be examined as a witness with regard to test-related information, except:

(a) in a proceeding related to an action taken by the employer under Section 34-38-8;

(b) in an action under Section 34-38-11; or

(c) in an action described in Subsection (3)(b)(i).

Section 39. Section **35A-6-105** is amended to read:

### **35A-6-105. Commissioner of Apprenticeship Programs.**

(1) There is created the position of Commissioner of Apprenticeship Programs within the department.

(2) The commissioner shall be appointed by the executive director and chosen from one or more recommendations provided by a majority vote of the State Workforce Development Board.

(3) The commissioner may be terminated without cause by the executive director.

(4) The commissioner shall:

(a) promote and educate the public, including high school guidance counselors and potential participants in apprenticeship programs, about apprenticeship programs, youth apprenticeship, and pre-apprenticeship programs offered in the state, including apprenticeship, youth apprenticeship, and pre-apprenticeship programs offered by private sector businesses, trade groups, labor unions, partnerships with educational institutions, and other associations in the state;

(b) coordinate with the department and other stakeholders, including union and nonunion apprenticeship programs, the Office of Apprenticeship, the State Board of Education,

## SB0043S07 compared with SB0043S06

the Utah system of higher education, the Department of Commerce, the Division of [~~Occupational and~~] Professional Licensing, and the Governor's Office of Economic Opportunity to improve and promote apprenticeship opportunities in the state; and

(c) provide an annual written report to:

(i) the department for inclusion in the department's annual written report described in Section 35A-1-109;

(ii) the Business, Economic Development, and Labor Appropriations Subcommittee; and

(iii) the Higher Education Appropriations Subcommittee.

(5) The annual written report described in Subsection (4)(c) shall provide information concerning:

(a) the number of available apprenticeship, youth apprenticeship, and pre-apprenticeship programs in the state;

(b) the number of apprentice participants in each program;

(c) the completion rate of each program;

(d) the cost of state funding for each program; and

(e) recommendations for improving apprenticeship, youth apprenticeship, and pre-apprenticeship programs.

Section 40. Section **36-23-102** is amended to read:

### **36-23-102. Occupational and Professional Licensure Review Committee.**

(1) There is created the Occupational and Professional Licensure Review Committee.

(2) The committee consists of nine members appointed as follows:

(a) three members of the House of Representatives, appointed by the speaker of the House of Representatives, with no more than two appointees from the same political party;

(b) three members of the Senate, appointed by the president of the Senate, with no more than two appointees from the same political party; and

(c) three public members appointed jointly by the speaker of the House of Representatives and the president of the Senate from the following two groups:

(i) at least one member who has previously served, but is no longer serving, on an advisory board created under Title 58, Occupations and Professions; and

(ii) at least one member from the general public who does not hold a license issued by



## SB0043S07 compared with SB0043S06

the Division of [~~Occupational and~~] Professional Licensing.

(3) (a) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

(b) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(b) as a cochair of the committee.

Section 41. Section **36-23-107** is amended to read:

### **36-23-107. Sunrise or sunset review -- Criteria.**

(1) In conducting a sunrise review or a sunset review under this chapter, the committee may:

(a) receive information from:

(i) representatives of the lawful occupation proposed to be newly regulated or that is subject to a sunset review;

(ii) the Division of [~~Occupational and~~] Professional Licensing; or

(iii) any other person; and

(b) review a proposal with or without considering proposed statutory language.

(2) When conducting a sunrise review or sunset review under this chapter, the committee shall:

(a) consider whether state regulation of the lawful occupation is necessary to address a compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public;

(b) consider if the committee's recommendations to the Legislature would negatively affect the interests of members of the regulated lawful occupation, including the effect on matters of reciprocity with other states;

(c) if the committee determines that state regulation of the lawful occupation is not necessary to protect against present, recognizable, and significant harm to the health or safety of the public, recommend to the Legislature that the state not regulate the profession;

(d) if the committee determines that state regulation of the lawful occupation is necessary in protecting against present, recognizable, and significant harm to the health or safety of the public, consider whether:

(i) the proposed or existing statute is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public; and

## SB0043S07 compared with SB0043S06

(ii) a potentially less restrictive alternative to licensing, including state certification, state registration, or exemption, would avoid unnecessary regulation while still protecting the health and safety of the public; and

(e) recommend to the Legislature any necessary changes to the proposed or existing statute to ensure it is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.

(3) In [~~its~~] the committee's performance of each sunrise review or sunset review, the committee may apply the following criteria, to the extent that it is applicable:

(a) whether the unregulated practice of the occupation or profession has clearly harmed or may harm or endanger the health, safety, or welfare of the public;

(b) whether the potential for harm or endangerment described in Subsection (3)(a) is easily recognizable and not remote;

(c) whether regulation of the occupation or profession will significantly diminish an identified risk to the health, safety, or welfare of the public;

(d) whether regulation of the lawful occupation:

(i) imposes significant new economic hardship on the public;

(ii) significantly diminishes the supply of qualified practitioners; or

(iii) otherwise creates barriers to service that are not consistent with the public welfare or interest;

(e) whether the lawful occupation requires knowledge, skills, and abilities that are:

(i) teachable; and

(ii) testable;

(f) whether the lawful occupation is clearly distinguishable from other lawful occupations that are already regulated;

(g) whether the lawful occupation has:

(i) an established code of ethics;

(ii) a voluntary certification program; or

(iii) other measures to ensure a minimum quality of service;

(h) whether:

(i) the lawful occupation involves the treatment of an illness, injury, or health care condition; and

## SB0043S07 compared with SB0043S06

(ii) practitioners of the lawful occupation will request payment of benefits for the treatment under an insurance contract subject to Section 31A-22-618;

(i) whether the public can be adequately protected by means other than regulation; and

(j) other appropriate criteria as determined by the committee.

Section 42. Section **38-1a-102** is amended to read:

### **38-1a-102. Definitions.**

As used in this chapter:

(1) "Alternate means" means a method of filing a legible and complete notice or other document with the registry other than electronically, as established by the division by rule.

(2) "Anticipated improvement" means the improvement:

(a) for which preconstruction service is performed; and

(b) that is anticipated to follow the performing of preconstruction service.

(3) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a preconstruction or construction lien is located.

(4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.

(5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

(6) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:

(a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or

(b) a combination of the bases listed in Subsection (6)(a).

(7) "Construction lender" means a person who makes a construction loan.

(8) "Construction lien" means a lien under this chapter for construction work.

(9) "Construction loan" does not include a consumer loan secured by the equity in the consumer's home.

(10) "Construction project" means an improvement that is constructed pursuant to an original contract.

(11) "Construction work":

## **SB0043S07 compared with SB0043S06**

(a) means labor, service, material, or equipment provided for the purpose and during the process of constructing, altering, or repairing an improvement; and

(b) includes scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.

(12) "Contestable notice" means a notice of preconstruction service under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.

(13) "Contesting person" means an owner, original contractor, subcontractor, or other interested person.

(14) "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.

(15) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103.

(16) "Entry number" means the reference number that:

(a) the designated agent assigns to each notice or other document filed with the registry; and

(b) is unique for each notice or other document.

(17) "Final completion" means:

(a) the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project, if a permanent certificate of occupancy is required;

(b) the date of the final inspection of the construction work by the local government entity having jurisdiction over the construction project, if an inspection is required under a state-adopted building code applicable to the construction work, but no certificate of occupancy is required;

(c) unless the owner is holding payment to ensure completion of construction work, the date on which there remains no substantial work to be completed to finish the construction work under the original contract, if a certificate of occupancy is not required and a final inspection is not required under an applicable state-adopted building code; or

(d) the last date on which substantial work was performed under the original contract,

## **SB0043S07 compared with SB0043S06**

if, because the original contract is terminated before completion of the construction work defined by the original contract, the local government entity having jurisdiction over the construction project does not issue a certificate of occupancy or perform a final inspection.

(18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

(19) "First preliminary notice filing" means a preliminary notice that:

(a) is the earliest preliminary notice filed on the construction project for which the preliminary notice is filed;

(b) is filed on a construction project that, at the time the preliminary notice is filed, has not reached final completion; and

(c) is not cancelled under Section 38-1a-307.

(20) "Government project-identifying information" has the same meaning as defined in Section 38-1b-102.

(21) "Improvement" means:

(a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or

(b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection (21)(a).

(22) "Interested person" means a person that may be affected by a construction project.

(23) "Notice of commencement" means a notice required under Section 38-1b-201 for a government project, as defined in Section 38-1b-102.

(24) "Original contract":

(a) means a contract between an owner and an original contractor for preconstruction service or construction work; and

(b) does not include a contract between an owner-builder and another person.

(25) "Original contractor" means a person, including an owner-builder, that contracts with an owner to provide preconstruction service or construction work.

(26) "Owner" means the person that owns the project property.

(27) "Owner-builder" means an owner, including an owner who is also an original contractor, who:

(a) contracts with one or more other persons for preconstruction service or construction work for an improvement on the owner's real property; and

## **SB0043S07 compared with SB0043S06**

(b) obtains a building permit for the improvement.

(28) "Preconstruction lien" means a lien under this chapter for a preconstruction service.

(29) "Preconstruction service":

(a) means to plan or design, or to assist in the planning or design of, an improvement or a proposed improvement:

(i) before construction of the improvement commences; and

(ii) for compensation separate from any compensation paid or to be paid for construction work for the improvement; and

(b) includes consulting, conducting a site investigation or assessment, programming, preconstruction cost or quantity estimating, preconstruction scheduling, performing a preconstruction construction feasibility review, procuring construction services, and preparing a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan, drawing, specification, or contract document.

(30) "Private project" means a construction project that is not a government project.

(31) "Project property" means the real property on or for which preconstruction service or construction work is or will be provided.

(32) "Registry" means the State Construction Registry under Part 2, State Construction Registry.

(33) "Required notice" means:

(a) a notice of preconstruction service under Section 38-1a-401;

(b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;

(c) a notice of commencement;

(d) a notice of construction loan under Section 38-1a-601;

(e) a notice under Section 38-1a-602 concerning a construction loan default;

(f) a notice of intent to obtain final completion under Section 38-1a-506; or

(g) a notice of completion under Section 38-1a-507.

(34) "Subcontractor" means a person that contracts to provide preconstruction service or construction work to:

(a) a person other than the owner; or

(b) the owner, if the owner is an owner-builder.

## SB0043S07 compared with SB0043S06

(35) "Substantial work" does not include repair work or warranty work.

(36) "Supervisory subcontractor" means a person that:

(a) is a subcontractor under contract to provide preconstruction service or construction work; and

(b) contracts with one or more other subcontractors for the other subcontractor or subcontractors to provide preconstruction service or construction work that the person is under contract to provide.

Section 43. Section **38-1b-102** is amended to read:

### **38-1b-102. Definitions.**

As used in this chapter:

(1) "Alternate means" means the same as that term is defined in Section 38-1a-102.

(2) "Construction project" means the same as that term is defined in Section 38-1a-102.

(3) "Construction work" means the same as that term is defined in Section 38-1a-102.

(4) "Designated agent" means the same as that term is defined in Section 38-1a-102.

(5) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103.

(6) "Government project" means a construction project undertaken by or for:

(a) the state, including a department, division, or other agency of the state; or

(b) a county, city, town, school district, local district, special service district, community reinvestment agency, or other political subdivision of the state.

(7) "Government project-identifying information" means:

(a) the lot or parcel number of each lot included in the project property that has a lot or parcel number; or

(b) the unique project number assigned by the designated agent.

(8) "Original contractor" means the same as that term is defined in Section 38-1a-102.

(9) "Owner" means the same as that term is defined in Section 38-1a-102.

(10) "Owner-builder" means the same as that term is defined in Section 38-1a-102.

(11) "Private project" means a construction project that is not a government project.

(12) "Project property" means the same as that term is defined in Section 38-1a-102.

(13) "Registry" means the same as that term is defined in Section 38-1a-102.

Section 44. Section **38-11-102** is amended to read:

## **SB0043S07 compared with SB0043S06**

### **38-11-102. Definitions.**

(1) "Certificate of compliance" means an order issued by the director to the owner finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a) and (4)(b) and is entitled to protection under Section 38-11-107.

(2) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of [~~Occupational and~~] Professional Licensing or the director's designee.

(5) "Division" means the Division of [~~Occupational and~~] Professional Licensing.

(6) "Duplex" means a single building having two separate living units.

(7) "Encumbered fund balance" means the aggregate amount of outstanding claims against the fund. The remainder of the money in the fund is unencumbered funds.

(8) "Executive director" means the executive director of the Department of Commerce.

(9) "Factory built housing" is as defined in Section 15A-1-302.

(10) "Factory built housing retailer" means a person that sells factory built housing to consumers.

(11) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

(12) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.

(13) "Licensee" means any holder of a license issued under Title 58, Chapter 3a, Architects Licensing Act; Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; Chapter 53, Landscape Architects Licensing Act; and Chapter 55, Utah Construction Trades Licensing Act.

(14) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.

(15) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an



## SB0043S07 compared with SB0043S06

owner-occupied residence.

(16) "Owner" means a person who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property that the person:

(i) owns; or

(ii) purchases after the person enters into a contract described in this Subsection (16)(a) and before completion of the owner-occupied residence;

(b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

(c) purchases a residence from a real estate developer after completion of the construction on the owner-occupied residence.

(17) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days after the day on which the construction on the residence is complete.

(18) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays necessary fees required under this chapter; and

(c) registers with the division:

(i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks recovery from the fund as a licensed contractor; or

(ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.

(19) (a) "Qualified services" means the following performed in construction on an owner-occupied residence:

(i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(ii) architectural services provided by an architect licensed under Title 58, Chapter 3a, Architects Licensing Act;

## **SB0043S07 compared with SB0043S06**

(iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

(v) design and specification services of mechanical or other systems;

(vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;

(vii) providing materials, supplies, components, or similar products;

(viii) renting equipment or materials;

(ix) labor at the site of the construction on the owner-occupied residence; and

(x) site preparation, set up, and installation of factory built housing.

(b) "Qualified services" does not include the construction of factory built housing in the factory.

(20) "Real estate developer" means a person having an ownership interest in real property who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a residence that is offered for sale to the public; or

(b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public.

(21) (a) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with:

(i) a primary or secondary detached single-family dwelling; or

(ii) a multifamily dwelling up to and including duplexes.

(b) "Residence" includes factory built housing.

(22) "Subsequent owner" means a person who purchases a residence from an owner within 180 days after the day on which the construction on the residence is completed.

Section 45. Section **38-11-103** is amended to read:

**38-11-103. Administration.**

## **SB0043S07 compared with SB0043S06**

This chapter shall be administered by the Division of [~~Occupational and~~] Professional Licensing pursuant to the provisions of this chapter and consistent with Title 58, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act.

Section 46. Section **41-6a-502** is amended to read:

**41-6a-502. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.**

(1) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;

(b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(c) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

(4) Beginning on July 1, 2012, a court shall, monthly, send to the Division of [~~Occupational and~~] Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving under the influence, in whole or in part, of a prescribed controlled substance.

(5) An offense described in this section is a strict liability offense.

(6) A guilty or no contest plea to an offense described in this section may not be held in abeyance.

Section 47. Section **41-6a-502.5** is amended to read:

**41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing requirements.**

## SB0043S07 compared with SB0043S06

(1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of impaired driving under this section if:

- (a) the defendant completes court ordered probation requirements; or
- (b) (i) the prosecutor agrees as part of a negotiated plea; and
- (ii) the court finds the plea to be in the interest of justice.

(2) A conviction entered under this section is a class B misdemeanor.

(3) (a) (i) If the entry of an impaired driving plea is based on successful completion of probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

(ii) If the defendant fails to appear before the court and establish successful completion of the court ordered probation requirements under Subsection (1)(a), the court shall enter an amended conviction of Section 41-6a-502.

(iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of conviction.

(b) The court may enter a conviction of impaired driving immediately under Subsection (1)(b).

(4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor violation of Section 41-6a-502 as impaired driving under this section is a reduction of one degree.

(5) (a) The court shall notify the Driver License Division of each conviction entered under this section.

(b) Beginning on July 1, 2012, a court shall, monthly, send to the Division of [~~Occupational and~~] Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving while impaired, in whole or in part, by a prescribed controlled substance.

(6) (a) The provisions in Subsections 41-6a-505(1), (3), (5), and (7) that require a sentencing court to order a convicted person to participate in a screening, an assessment, or an educational series, or obtain substance abuse treatment or do a combination of those things, apply to a conviction entered under this section.

(b) The court shall render the same order regarding screening, assessment, an

## SB0043S07 compared with SB0043S06

educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under this section as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections 41-6a-505(1), (3), (5), and (7).

(7) (a) Except as provided in Subsection (7)(b), a report authorized by Section 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed the program of a driving under the influence court.

(b) The provisions of Subsection (7)(a) do not apply to a report concerning:

- (i) a CDL license holder; or
- (ii) a violation that occurred in a commercial motor vehicle.

(8) The provisions of this section are not available:

(a) to a person who has a prior conviction as that term is defined in Subsection 41-6a-501(2); or

(b) where there is admissible evidence that the individual:

(i) had a blood alcohol level of .16 or higher;

(ii) had a blood alcohol level of .05 or higher in addition to any measurable controlled substance; or

(iii) had a combination of two or more controlled substances in the person's body that were not:

(A) prescribed by a licensed physician; or

(B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

Section 48. Section **53-2a-1205** is amended to read:

### **53-2a-1205. Administration -- Notification and procedures.**

(1) Any out-of-state business that enters the state shall, within a reasonable time after entry, not to exceed 30 days, provide to the Division of [~~Occupational and~~] Professional Licensing a statement that it is in the state for purposes of responding to the disaster or emergency, which statement shall include the business's:

- (a) name;
- (b) state of domicile;

## SB0043S07 compared with SB0043S06

- (c) principal business address;
- (d) federal tax identification number;
- (e) date of entry;
- (f) contact information; and
- (g) evidence of compliance with the regulatory or licensing requirements in Section 53-2a-1203, such as a copy of applicable permits or licenses.

(2) Any affiliate of a registered business in the state and any out-of-state business that is registered as a public utility in another state and that is providing assistance under the terms of a utility multistate mutual aid agreement shall not be required to provide the information required in Subsection (1), unless requested by the Division of [~~Occupational and~~] Professional Licensing within a reasonable period of time.

(3) An out-of-state business or an out-of-state employee that remains in the state after the disaster period shall complete state and local registration, licensing, and filing requirements that establish the requisite business presence or residency in the state.

- (4) The Division of [~~Occupational and~~] Professional Licensing shall:
- (a) make rules necessary to implement Subsection (3);
  - (b) develop and provide forms or online processes; and
  - (c) maintain and make available an annual report of any designations made pursuant to this section.

Section 49. Section **53-10-114** is amended to read:

### **53-10-114. Authority regarding drug precursors.**

- (1) As used in this section, "acts" means:
  - (a) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; and
  - (b) Title 58, Chapter 37d, Clandestine Drug Lab Act.
- (2) The division has authority to enforce the drug lab and precursor acts. To carry out this purpose, the division may:
  - (a) inspect, copy, and audit any records, inventories of controlled substance precursors, and reports required under the acts and rules adopted under the acts;
  - (b) enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections;
  - (c) assist the law enforcement agencies of the state in enforcing the acts;

## SB0043S07 compared with SB0043S06

(d) conduct investigations to enforce the acts;

(e) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and

(f) work in cooperation with the Division of [~~Occupational and~~] Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Section 50. Section **53B-24-304** is amended to read:

### **53B-24-304. Powers of council.**

The council may:

(1) conduct surveys, with the assistance of the Division of [~~Occupational and~~] Professional Licensing within the Department of Commerce, to assess and meet changing market and education needs;

(2) notwithstanding the provisions of Subsection 35A-4-312(3), receive information obtained by the Division of Workforce Information and Payment Services under the provisions of Section 35A-4-312 for purposes consistent with the council's duties as identified under Section 53B-24-303, including identifying changes in the medical and health care workforce numbers, types, and geographic distribution;

(3) appoint advisory committees of broad representation on interdisciplinary clinical education, workforce mix planning and projections, funding mechanisms, and other topics as is necessary;

(4) use federal money for necessary administrative expenses to carry out [its] the council's duties and powers as permitted by federal law;

(5) distribute program money in accordance with Subsection 53B-24-303(7); and

(6) as is necessary to carry out [its] the council's duties under Section 53B-24-303:

(a) hire employees; and

(b) adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 51. Section **53F-2-305** is amended to read:

### **53F-2-305. Professional staff weighted pupil units.**

(1) Professional staff weighted pupil units are computed and distributed in accordance with the following schedule:

**SB0043S07 compared with SB0043S06**

(a) Professional Staff Cost Formula

Years of Experience	Bachelor's Degree	Bachelor's +30 Qt. Hr.	Master's Degree	Master's Degree +45 Qt. Hr.	Doctorate
	1	1.00	1.05	1.10	1.15
2	1.05	1.10	1.15	1.20	1.25
3	1.10	1.15	1.20	1.25	1.30
4	1.15	1.20	1.25	1.30	1.35
5	1.20	1.25	1.30	1.35	1.40
6	1.25	1.30	1.35	1.40	1.45
7	1.30	1.35	1.40	1.45	1.50
8	1.35	1.40	1.45	1.50	1.55
9			1.50	1.55	1.60
10				1.60	1.65
11					1.70

(b) Multiply the number of full-time or equivalent professional personnel in each applicable experience category in Subsection (1)(a) by the applicable weighting factor.

(c) Divide the total of Subsection (1)(b) by the number of professional personnel included in Subsection (1)(b) and reduce the quotient by 1.00.

(d) Multiply the result of Subsection (1)(c) by 1/4 of the weighted pupil units computed in accordance with Sections 53F-2-302 and 53F-2-304.

(2) The state board shall enact rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that require a certain percentage of a school district's or charter school's professional staff to be certified in the area in which the staff teaches in order for the school district or charter school to receive full funding under the schedule.

(3) If an individual's teaching experience is a factor in negotiating a contract of employment to teach in the state's public schools, then the LEA governing board is encouraged to accept as credited experience all of the years the individual has taught in the state's public schools.

(4) The professional personnel described in Subsection (1) shall include an individual



## SB0043S07 compared with SB0043S06

employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind who holds:

(a) a license in the field of social work issued by the Division of [~~Occupational and~~] Professional Licensing; and

(b) a position as a social worker.

Section 52. Section **53F-2-405** is amended to read:

### **53F-2-405. Educator salary adjustments.**

(1) As used in this section, "educator" means a person employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind who holds:

(a) (i) a license issued by the state board; and

(ii) a position as a:

(A) classroom teacher;

(B) speech pathologist;

(C) librarian or media specialist;

(D) preschool teacher;

(E) mentor teacher;

(F) teacher specialist or teacher leader;

(G) guidance counselor;

(H) audiologist;

(I) psychologist; or

(J) social worker; or

(b) (i) a license issued by the Division of [~~Occupational and~~] Professional Licensing; and

(ii) a position as a social worker.

(2) In recognition of the need to attract and retain highly skilled and dedicated educators, the Legislature shall annually appropriate money for educator salary adjustments, subject to future budget constraints.

(3) Money appropriated to the state board for educator salary adjustments shall be distributed to school districts, charter schools, and the Utah Schools for the Deaf and the Blind in proportion to the number of full-time-equivalent educator positions in a school district, a charter school, or the Utah Schools for the Deaf and the Blind as compared to the total number

## **SB0043S07 compared with SB0043S06**

of full-time-equivalent educator positions in school districts, charter schools, and the Utah Schools for the Deaf and the Blind.

(4) A school district, a charter school, or the Utah Schools for the Deaf and the Blind shall award bonuses to educators as follows:

(a) the amount of the salary adjustment shall be the same for each full-time-equivalent educator position in the school district, charter school, or the Utah Schools for the Deaf and the Blind;

(b) an individual who is not a full-time educator shall receive a partial salary adjustment based on the number of hours the individual works as an educator; and

(c) a salary adjustment may be awarded only to an educator who has received a satisfactory rating or above on the educator's most recent evaluation.

(5) The state board may make rules as necessary to administer this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) (a) Subject to future budget constraints, the Legislature shall appropriate sufficient money each year to:

(i) maintain educator salary adjustments provided in prior years; and

(ii) provide educator salary adjustments to new employees.

(b) Money appropriated for educator salary adjustments shall include money for the following employer-paid benefits:

(i) retirement;

(ii) worker's compensation;

(iii) social security; and

(iv) Medicare.

(7) (a) Subject to future budget constraints, the Legislature shall:

(i) maintain the salary adjustments provided to school administrators in the 2007-08 school year; and

(ii) provide salary adjustments for new school administrators in the same amount as provided for existing school administrators.

(b) The appropriation provided for educator salary adjustments shall include salary adjustments for school administrators as specified in Subsection (7)(a).

(c) In distributing and awarding salary adjustments for school administrators, the state

## SB0043S07 compared with SB0043S06

board, a school district, a charter school, or the Utah Schools for the Deaf and the Blind shall comply with the requirements for the distribution and award of educator salary adjustments as provided in Subsections (3) and (4).

Section 53. Section **58-1-102** is amended to read:

### **58-1-102. Definitions.**

For purposes of this title:

(1) "Ablative procedure" is as defined in Section 58-67-102.

(2) "Cosmetic medical procedure":

(a) is as defined in Section 58-67-102; and

(b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of [~~Occupational and~~] Professional Licensing.

(5) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103.

(6) "Executive director" means the executive director of the Department of Commerce.

(7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.

(8) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove living tissue.

(ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.

(b) "Nonablative procedure" does not include:

(i) a superficial procedure;

(ii) the application of permanent make-up; or

(iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.

(9) "Pain clinic" means:

## SB0043S07 compared with SB0043S06

(a) a clinic that advertises its primary purpose is the treatment of chronic pain; or

(b) a clinic in which greater than 50% of the clinic's annual patient population receive treatment primarily for non-terminal chronic pain using Schedule II-III controlled substances.

(10) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.

(11) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

(12) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

Section 54. Section **58-1-103** is amended to read:

### **58-1-103. Division created to administer licensing laws.**

There is created within the Department of Commerce the Division of [~~Occupational and~~] Professional Licensing. The division shall administer and enforce all licensing laws of Title 58, Occupations and Professions.

Section 55. Section **58-1-202** is amended to read:

### **58-1-202. Boards -- Duties, functions, and responsibilities.**

(1) The duties, functions, and responsibilities of each board established under this title include the following:

(a) recommending to the director appropriate rules and statutory changes, including changes to remove regulations that are no longer necessary or effective in protecting the public and enhancing commerce;

(b) recommending to the director policy and budgetary matters;

(c) approving and establishing a passing score for applicant examinations;

(d) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing;

(e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents; and

(f) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director.

(2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Utah Construction Trades Licensing Act.

## SB0043S07 compared with SB0043S06

(3) (a) Each board or commission established under this title may recommend to the appropriate legislative committee whether the board or commission supports a change to a licensing act.

(b) This Subsection (3) does not:

- (i) require a board's approval to amend a practice act; and
- (ii) apply to technical or clarifying amendments to a practice act.

Section 56. Section **58-1-301** is amended to read:

### **58-1-301. License application -- Licensing procedure.**

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division.

(b) Each completed application shall:

(i) contain documentation of the particular qualifications required of the applicant under this title or rules made by the division;

(ii) include the applicant's full legal name and social security number;

(iii) be verified by the applicant; and

(iv) be accompanied by the appropriate fees.

(c) An applicant's social security number is a private record under Subsection 63G-2-302(1)(i).

(2) (a) The division shall issue a license to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) The division shall provide a written notice of additional proceedings to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) The division shall provide a written notice of denial of licensure to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) The division shall provide a written notice of incomplete application and conditional denial of licensure to an applicant who submits an incomplete application, which notice shall advise the applicant that the application is incomplete and that the application is

## **SB0043S07 compared with SB0043S06**

denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) The division may only issue a license to an applicant under this title if the applicant meets the requirements for that license as established under this title and by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) If an applicant meets all requirements for a specific license, the division shall issue the license to the applicant.

(5) (a) As used in this Subsection (5):

(i) (A) "Competency-based licensing requirement" means a practical assessment of knowledge and skills that clearly demonstrate a person is prepared to engage in an occupation or profession regulated by this title, and which the director determines is at least as effective as a time-based licensing requirement at demonstrating proficiency and protecting the health and safety of the public.

(B) "Competency-based licensing requirement" may include any combination of training, experience, testing, or observation.

(ii) (A) "Time-based licensing requirement" means a specific number of hours, weeks, months, or years of education, training, supervised training, or other experience that an applicant for licensure under this title is required to complete before receiving a license under this title.

(B) "Time-based licensing requirement" does not include an associate degree, a bachelor's degree, or a graduate degree from an accredited institution of higher education.

(b) Subject to Subsection (5)(c), for an occupation or profession regulated by this title that has a time-based licensing requirement, the director, after consultation with the appropriate board, may by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement.

(c) If a time-based licensing requirement involves a program that must be approved or accredited by a specific entity or board, the director may only allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement under Subsection (5)(b) if the competency-based requirement is approved or accredited by the specific entity or board as a replacement or alternative to the

## SB0043S07 compared with SB0043S06

time-based licensing requirement.

(d) By October 1 of each year, the director shall provide a written report to the Occupational and Professional Licensure Review Committee describing any competency-based licensing requirements implemented under this Subsection (5).

Section 57. Section **58-1-302** is amended to read:

### **58-1-302. License by endorsement.**

(1) Subject to Subsections [~~(2), (3), (4), and (5)~~] (3) through (6), the division shall issue a license [~~without examination~~] to a person who has been licensed in a state, district, or territory of the United States if:

(a) after being licensed outside of this state, the person has at least one year of experience in the state, district, or territory of the United States where the license was issued;

(b) the person's license is in good standing in the state, district, or territory of the United States where the license was issued; and

(c) the division determines that the license issued by the state, district, or territory of the United States encompasses a similar scope of practice as the license sought in this state.

(2) Subject to Subsections (3) through (6), the division may issue a license to a person who:

(a) has been licensed in a state, district, or territory of the United States, or in a jurisdiction outside of the United States, if:

(i) (A) after being licensed, the person has at least one year of experience in the jurisdiction where the license was issued; and

(B) the division determines that the person's education, experience, and skills demonstrate competency in the occupation or profession for which the person seeks licensure;

or

(ii) the division determines that the licensure requirements of the jurisdiction at the time the license was issued were substantially similar to the current licensure requirements of this state; or

(b) has never been licensed in a state, district, or territory of the United States, or in a jurisdiction outside of the United States, if:

(i) the person was educated in or obtained relevant experience in a state, district, or territory of the United States, or a jurisdiction outside of the United States; and

## SB0043S07 compared with SB0043S06

(ii) the division determines that the education or experience was substantially similar to the current education or experience requirements for licensure in this state.

~~[(2)]~~ (3) 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 administration and requirements of this section.

~~[(3) Notwithstanding the provisions of Subsection (1), the]~~

(4) The division may refuse to issue a license to a person under the provisions of this section if:

(a) the division determines that there is reasonable cause to believe that the person is not qualified to receive a license in this state; or

(b) the person has a previous or pending disciplinary action related to the person's license.

~~[(4)]~~ (5) Before a person may be issued a license under this section, the person shall:

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

(b) produce satisfactory evidence of the person's identity, qualifications, and good standing in the occupation or profession for which licensure is sought.

~~[(5)]~~ (6) In accordance with Section 58-1-107, licensure endorsement provisions in this section are subject to and may be supplemented or altered by licensure endorsement provisions or multistate licensure compacts in specific chapters of this title.

~~[(6)]~~ (7) On or before October 1, 2022, the division shall provide a written report to the Business and Labor Interim Committee regarding the effectiveness and sufficiency of the provisions of this section at ensuring that persons receiving a license without examination under the provisions of this section are qualified to receive a license in this state.

Section 58. Section **58-3a-302** is amended to read:

### **58-3a-302. Qualifications for licensure.**

(1) Except as provided in Subsection (2), each applicant for licensure as an architect 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 graduated and received an earned bachelors or masters degree from an architecture program meeting criteria established by rule by the division in collaboration with



## SB0043S07 compared with SB0043S06

the board;

(d) have successfully completed a program of diversified practical experience established by rule by the division in collaboration with the board;

(e) have successfully passed examinations established by rule by the division in collaboration with the board; and

(f) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualifications for license.

(2) Each applicant for licensure as an architect by endorsement 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) submit satisfactory evidence of:

(i) ~~(A)~~ (A) current licensure in good standing in a jurisdiction recognized by rule by the division in collaboration with the board; and

~~[(ii)]~~ (B) current certification from the National Council of Architectural Registration Boards; or

~~[(iii)]~~ (ii) (A) current license in good standing in a jurisdiction recognized by rule by the division in collaboration with the board; and

~~[(iv)]~~ (B) full-time employment as a licensed architect as a principal for at least five of the last seven years immediately preceding the date of the application;

(d) have successfully passed ~~[any]~~ an examination established by rule by the division in collaboration with the board; and

(e) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualifications for license.

Section 59. Section **58-9-302** is amended to read:

### **58-9-302. Qualifications for licensure.**

(1) Each applicant for licensure as a funeral service director shall:

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

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

~~[(c) be of good moral character in that the applicant has not been convicted of:]~~

~~[(i) a first or second degree felony;]~~

~~[(ii) a misdemeanor involving moral turpitude; or]~~

## SB0043S07 compared with SB0043S06

~~[(iii) any other crime that when considered with the duties and responsibilities of a funeral service director is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;]~~

~~[(d)]~~ (c) have obtained a high school diploma or its equivalent or a higher education degree;

~~[(e)]~~ (d) have obtained an associate degree, or its equivalent, in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education or other accrediting body recognized by the U.S. Department of Education;

~~[(f)]~~ (e) have completed not less than 2,000 hours and 50 embalmings, over a period of not less than one year, of satisfactory performance in training as a licensed funeral service intern under the supervision of a licensed funeral service director; and

~~[(g)]~~ (f) obtain a passing score on examinations approved by the division in collaboration with the board.

(2) Each applicant for licensure as a funeral service intern shall:

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

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

~~[(c) be of good moral character in that the applicant has not been convicted of:]~~

~~[(i) a first or second degree felony;]~~

~~[(ii) a misdemeanor involving moral turpitude; or]~~

~~[(iii) any other crime that when considered with the duties and responsibilities of a funeral service intern is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;]~~

~~[(d)]~~ (c) have obtained a high school diploma or its equivalent or a higher education degree; and

~~[(e)]~~ (d) obtain a passing score on an examination approved by the division in collaboration with the board.

(3) Each applicant for licensure as a funeral service establishment and each funeral service establishment licensee shall:

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

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

(c) have in place:

## SB0043S07 compared with SB0043S06

(i) an embalming room for preparing dead human bodies for burial or final disposition, which may serve one or more facilities operated by the applicant;

(ii) a refrigeration room that maintains a temperature of not more than 40 degrees fahrenheit for preserving dead human bodies prior to burial or final disposition, which may serve one or more facilities operated by the applicant; and

(iii) maintain at all times a licensed funeral service director who is responsible for the day-to-day operation of the funeral service establishment and who is personally available to perform the services for which the license is required;

(d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service director if the funeral service establishment sells preneed funeral arrangements;

(e) file with the completed application a copy of each form of contract or agreement the applicant will use in the sale of preneed funeral arrangements;

(f) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product to be sold by the provider or the provider's sales agent; and

(g) if the applicant intends to offer alkaline hydrolysis in a funeral service establishment, provide evidence that in accordance with rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) the funeral service establishment meets the minimum standards for the handling, holding, and processing of deceased human remains in a safe, clean, private, and respectful manner; and

(ii) all operators of the alkaline hydrolysis equipment have received adequate training.

(4) Each applicant for licensure as a preneed funeral arrangement sales agent shall:

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

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

~~[(c) be of good moral character in that the applicant has not been convicted of:]~~

~~[(i) a first or second degree felony;]~~

~~[(ii) a misdemeanor involving moral turpitude; or]~~

~~[(iii) any other crime that when considered with the duties and responsibilities of a preneed funeral sales agent is considered by the division and the board to indicate that the best~~

## SB0043S07 compared with SB0043S06

~~interests of the public are not served by granting the applicant a license;]~~

~~[(d)]~~ (c) have obtained a high school diploma or its equivalent or a higher education degree;

~~[(e)]~~ (d) have obtained a passing score on an examination approved by the division in collaboration with the board;

~~[(f)]~~ (e) affiliate with a licensed funeral service establishment; and

~~[(g)]~~ (f) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product.

Section 60. Section **58-15-101**, which is renumbered from Section 58-15-2 is renumbered and amended to read:

### CHAPTER 15. HEALTH FACILITY ADMINISTRATOR ACT

#### Part 1. General Provisions

##### ~~[58-15-2].~~ **58-15-101. 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 health facility, regardless of whether ~~[that]~~:

(a) the person has an ownership interest in the facility ~~[and whether his]; or~~

(b) the person's 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]~~ 58-15-201.

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

(4) "Intermediate care facility" means an institution that provides, on a regular basis, health care and services to individuals who do not require the degree of care and treatment a hospital or skilled nursing facility provides, 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 that provides, on a regular basis, health-related care and service to 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

## SB0043S07 compared with SB0043S06

provides, 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 individual, a sick individual, or 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~~] willfully 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 61. Section **58-15-201**, which is renumbered from Section 58-15-3 is renumbered and amended to read:

### Part 2. Board

#### ~~[58-15-3].~~ **58-15-201. Health Facility Administrators Licensing Board.**

(1) There is created a Health Facility Administrators Licensing Board consisting of:

(a) one administrator from a skilled nursing facility[;];

(b) two administrators from intermediate care facilities[;];

(c) one administrator from an intermediate care facility for people with an intellectual disability[;]; and

(d) one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

(b) The board, in collaboration with the division, may establish continuing education requirements by rule.

(c) Board members may not receive compensation for their involvement in continuing education programs.

Section 62. Section **58-15-301**, which is renumbered from Section 58-15-4 is

## SB0043S07 compared with SB0043S06

renumbered and amended to read:

### Part 3. Licensing

#### ~~[58-15-4].~~ 58-15-301. Licensure requirements.

(1) An applicant for a license under this chapter shall submit to the division a written application ~~[to the division, verified under oath, that the applicant is of good moral character as it relates to the functions and responsibilities of the practice of administration of a health facility]~~ in a form prescribed by the division.

(2) After July 1, 1985, all new applicants are required to have~~[-, in addition to Subsection (1);]~~ the education or experience requirements as established by rule and as approved by the division.

(3) The applicant shall pay ~~[a fee to the Department of Commerce determined by it pursuant to]~~ to the department a fee in an amount determined by the department in accordance with Section 63J-1-504 for:

(a) admission to the examination~~[-, for];~~

(b) an initial license~~[-, and for];~~ and

(c) a renewal license.

(4) (a) The applicant shall pass a written examination in subjects determined by the board.

(b) Upon the applicant passing the examination described in Subsection (4)(a) and ~~[payment of]~~ paying the license fee described in Subsection (3), the board shall recommend issuance to the applicant of a license to practice as a health facility administrator.

(5) (a) A temporary license may be issued without examination to a person who meets the requirements established by statute and by rule for an administrator. ~~[The]~~

(b) A temporary license may be issued only:

(i) to fill a position of administrator that unexpectedly becomes vacant; and ~~[may be issued for only a single period not to exceed six months.]~~

(ii) for a single period of six months or less.

~~[(6) A license may be granted to an applicant who is a licensed nursing home administrator in another state if the standards for licensure in the other state are equivalent to those criteria set forth in Subsections (1) and (2), and if the applicant is otherwise qualified.]~~

Section 63. Section 58-15-302, which is renumbered from Section 58-15-4.5 is

## SB0043S07 compared with SB0043S06

renumbered and amended to read:

~~[58-15-4.5].~~ **58-15-302. Term of license -- Expiration -- Renewal.**

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

(b) A renewal period described in Subsection (1)(a) may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 64. Section **58-15-303**, which is renumbered from Section 58-15-11 is renumbered and amended to read:

~~[58-15-11].~~ **58-15-303. Exemptions to chapter.**

(1) In addition to the exemptions described in Section 58-1-307, this chapter does not apply to:

(a) a facility of a recognized church or denomination that cares for the sick and suffering by mental or spiritual means if no drug or material remedy is used in the care provided; or

(b) the superintendent of the Utah State Developmental Center described in Section 62A-5-201.

(2) Any facility or person exempted under this section shall comply with each statute and rule on sanitation and life safety.

Section 65. Section **58-15-401**, which is renumbered from Section 58-15-12 is renumbered and amended to read:

### **Part 4. License Denial and Discipline**

~~[58-15-12].~~ **58-15-401. Grounds for denial of license -- Disciplinary proceedings.**

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Section 66. Section **58-15-501**, which is renumbered from Section 58-15-10 is

## SB0043S07 compared with SB0043S06

renumbered and amended to read:

### Part 5. Unlawful Conduct

#### ~~[58-15-10].~~ 58-15-501. Penalty for unlawful conduct.

~~[Any]~~ A person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1) is guilty of a class B misdemeanor.

Section 67. Section ~~58-16a-302~~ is amended to read:

#### ~~58-16a-302.~~ Qualifications for licensure.

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

~~[(a)]~~ (1) submit an application in a form prescribed by the division;

~~[(b)]~~ (2) pay a fee as determined by the division under Section 63J-1-504;

~~[(c)-(i)]~~ (3)(a) be a doctoral graduate of a recognized school of optometry accredited by the American Optometric Association's Accreditation Council on Optometric Education; or  
~~[(ii)]~~ (b) 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)(c)-(i)]~~ (3)(a), as demonstrated by the applicant for licensure;

~~[(d)]~~ (4) 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;

~~[(e)]~~ (5) have passed examinations approved by the division in consultation with the board that include:

~~[(i)]~~ (a) a standardized national optometry examination;

~~[(ii)]~~ (b) a standardized clinical examination; and

~~[(iii)]~~ (c) a standardized national therapeutics examination; and

~~[(f)]~~ (6) 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) verifies that the individual is licensed as an optometrist in good standing in each]~~



## SB0043S07 compared with SB0043S06

~~state of the United States, or province of Canada, in which the individual is currently licensed as an optometrist; and]~~

~~[(d) 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 optometry in this state.]~~

Section 68. Section **58-17b-504** is amended to read:

### **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

(1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

(3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of unprofessional or unlawful conduct, the division may:

- (i) assess administrative penalties; and
- (ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-17b-505.

(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(5) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of ~~Occupational and~~ Professional Licensing Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4,

## SB0043S07 compared with SB0043S06

Administrative Procedures Act.

(b) Any person who is in violation of the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, or any rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, or any rule or order issued with respect to these provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-17b-401 may not be assessed through a citation.

(d) Each citation shall be in writing and specifically 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. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(e) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(iii) by mail.

(f) If within 20 calendar days from the service of a 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. The period to contest the citation may be extended by the division for cause.

## SB0043S07 compared with SB0043S06

(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 the 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) No citation may be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

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

(i) 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 a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 69. Section **58-20b-102** is amended to read:

### **58-20b-102. Definitions.**

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

(1) "Accredited program" means a degree-offering program from:

(a) an institution, college, or university that is accredited by the Department of Education or the Council for Higher Education Accreditation; or

(b) a non-accredited institution, college, or university that offers education equivalent to Department of Education-accredited programs, as determined by a third party selected by the board.

(2) "Board" means the Environmental Health Scientist Board created in Section 58-20b-201.

(3) "General supervision" means the supervising environmental health scientist is available for immediate voice communication with the person he or she is supervising.

(4) "Practice of environmental health science" means:

(a) the enforcement of, the issuance of permits required by, or the inspection for the purpose of enforcing state and local public health laws in the following areas:

## SB0043S07 compared with SB0043S06

- (i) air quality;
- (ii) food [quality] safety;
- (iii) solid, hazardous, and toxic substances disposal;
- (iv) consumer product safety;
- (v) housing;
- (vi) noise control;
- (vii) radiation protection;
- (viii) water quality;
- (ix) vector control;
- (x) drinking water quality;
- (xi) milk sanitation;
- (xii) rabies control;
- (xiii) public health nuisances;
- (xiv) indoor clean air regulations;
- (xv) institutional and residential sanitation; or
- (xvi) recreational facilities sanitation; or

(b) representing oneself in any manner as, or using the titles "environmental health scientist," "environmental health scientist-in-training," or "registered sanitarian."

(5) "Unlawful conduct" means the same as that term is defined in Section 58-1-501.

(6) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-20b-501 and as may be further defined by division rule.

Section 70. Section **58-22-102** is amended to read:

### **58-22-102. Definitions.**

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

(1) "Board" means the Professional Engineers and Professional Land Surveyors Licensing Board created in Section 58-22-201.

(2) "Building" means a structure which has human occupancy or habitation as its principal purpose, and includes the structural, mechanical, and electrical systems, utility services, and other facilities required for the building, and is otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

## **SB0043S07 compared with SB0043S06**

(3) "Complete construction plans" means a final set of plans, specifications, and reports for a building or structure that normally includes:

- (a) floor plans;
- (b) elevations;
- (c) site plans;
- (d) foundation, structural, and framing detail;
- (e) electrical, mechanical, and plumbing design;
- (f) information required by the energy code;
- (g) specifications and related calculations as appropriate; and
- (h) all other documents required to obtain a building permit.

(4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology.

(5) "Fund" means the Professional Engineer, Professional Structural Engineer, and Professional Land Surveyor Education and Enforcement Fund created in Section 58-22-103.

(6) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(7) "Principal" means a licensed professional engineer, professional structural engineer, or professional land surveyor having responsible charge of an organization's professional engineering, professional structural engineering, or professional land surveying practice.

(8) "Professional engineer" means a person licensed under this chapter as a professional engineer.

(9) (a) "Professional engineering," "the practice of engineering," or "the practice of professional engineering" means a service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the service or creative work as consultation, investigation, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land and water, facility programming, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications; any of which embraces these services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products

## **SB0043S07 compared with SB0043S06**

or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, and including other professional services as may be necessary to the planning, progress, and completion of any engineering services.

(b) "The practice of professional engineering" does not include the practice of architecture as defined in Section 58-3a-102, but a licensed professional engineer may perform architecture work as is incidental to the practice of engineering.

(10) "Professional engineering intern" means a person who:

(a) has completed the education requirements to become a professional engineer;

(b) has passed the fundamentals of engineering examination; and

(c) is engaged in obtaining the four years of qualifying experience for licensure under the [direct] supervision of a licensed professional engineer.

(11) "Professional land surveying" or "the practice of land surveying" means a service or work, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating of property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.

(12) "Professional land surveyor" means an individual licensed under this chapter as a professional land surveyor.

(13) "Professional structural engineer" means a person licensed under this chapter as a professional structural engineer.

(14) (a) "Professional structural engineering" or "the practice of structural engineering" means a service or creative work providing structural engineering services for significant structures, including:

(i) buildings and other structures representing a substantial hazard to human life, which include:

## **SB0043S07 compared with SB0043S06**

(A) buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300;

(B) buildings and other structures with elementary school, secondary school, or day care facilities with an occupant load greater than 250;

(C) buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;

(D) health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities;

(E) jails and detention facilities with a gross area greater than 3,000 square feet; and

(F) buildings and other structures with an occupant load greater than 5,000;

(ii) buildings and other structures designated as essential facilities, including:

(A) hospitals and other health care facilities having surgery or emergency treatment facilities with a gross area greater than 3,000 square feet;

(B) fire, rescue, and police stations and emergency vehicle garages with a mean height greater than 24 feet or a gross area greater than 5,000 square feet;

(C) designated earthquake, hurricane, or other emergency shelters with a gross area greater than 3,000 square feet;

(D) designated emergency preparedness, communication, and operation centers and other buildings required for emergency response with a mean height more than 24 feet or a gross area greater than 5,000 square feet;

(E) power-generating stations and other public utility facilities required as emergency backup facilities with a gross area greater than 3,000 square feet;

(F) structures with a mean height more than 24 feet or a gross area greater than 5,000 square feet containing highly toxic materials as defined by the division by rule, where the quantity of the material exceeds the maximum allowable quantities set by the division by rule; and

(G) aviation control towers, air traffic control centers, and emergency aircraft hangars at commercial service and cargo air services airports as defined by the Federal Aviation Administration with a mean height greater than 35 feet or a gross area greater than 20,000 square feet; and

(iii) buildings and other structures requiring special consideration, including:

## SB0043S07 compared with SB0043S06

(A) structures or buildings that are normally occupied by human beings and are five stories or more in height;

(B) structures or buildings that are normally occupied by human beings and have an average roof height more than 60 feet above the average ground level measured at the perimeter of the structure; and

(C) buildings that are over 200,000 aggregate gross square feet in area.

(b) "Professional structural engineering" or "the practice of structural engineering":

(i) includes the definition of professional engineering or the practice of professional engineering as provided in Subsection (9); and

(ii) may be further defined by rules made by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(15) "Structure" means that which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in a definite manner, and as otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(16) "Supervision [~~of an employee, subordinate, associate, or drafter of a licensee]~~" means that a licensed professional engineer, professional structural engineer, or professional land surveyor is responsible for and personally reviews, corrects when necessary, and approves work performed by an employee, subordinate, associate, or drafter under the direction of the licensee, and may be further defined by rule by the division in collaboration with the board.

(17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(18) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-22-501.

(19) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-22-502.5.

Section 71. Section **58-28-304** is amended to read:

### **58-28-304. Temporary license -- License reciprocity.**

(1) The division may issue a temporary license to practice veterinary medicine, surgery, and dentistry to any person not qualified for licensure under [~~Subsection (4)]~~ Section 58-1-302 who meets all requirements of Section 58-28-302 with the exception of Subsections



## SB0043S07 compared with SB0043S06

58-28-302(1)(a) and (c), except that the temporary license shall by its terms expire at the date examination results are available for the examination next following the date of the issuance of the temporary license.

(2) The temporary license shall permit the holder to practice under the indirect supervision of a veterinarian licensed to practice in this state.

(3) The division may extend the expiration date of the temporary license until the following examination date if:

(a) the applicant shows to the board good cause for failing to take or pass the examination; and

(b) the majority of the board members recommend the extension.

~~[(4) Upon the recommendation of the board, the division may issue a license without examination to a person who:]~~

~~[(a) has been licensed or registered to practice veterinary medicine, surgery, and dentistry in any state, district, or territory of the United States or in any foreign country, whose educational, examination, and experience requirements are or were at the time the license was issued equal to those of this state;]~~

~~[(b) has engaged in the practice of veterinary medicine, dentistry, and surgery while licensed by another jurisdiction for at least two years;]~~

~~[(c) obtained the license in another jurisdiction after passing an examination component acceptable to the division and the board;]~~

~~[(d) produces satisfactory evidence of having practiced veterinary medicine competently and in accordance with the standards and ethics of the profession while practicing in another jurisdiction; and]~~

~~[(e) produces satisfactory evidence of identity and good moral character as it relates to the applicant's functions and practice as a licensed veterinarian.]~~

Section 72. Section **58-28-503** is amended to read:

### **58-28-503. Penalty for unlawful or unprofessional conduct.**

(1) Any person who violates the unlawful conduct provisions of Section 58-28-501 is guilty of a third degree felony.

(2) After proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, the division may

## SB0043S07 compared with SB0043S06

impose administrative penalties of up to \$10,000 for acts of unprofessional conduct or unlawful conduct under this chapter.

(3) Assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

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

(i) 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 a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 73. Section **58-31b-303** is amended to read:

**58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing programs.**

An applicant for licensure as a practical nurse or registered nurse who is a graduate of a nursing education program not approved by the division in collaboration with the board must comply with the requirements of this section.

(1) An applicant for licensure as a licensed practical nurse shall:

(a) meet all requirements of Subsection 58-31b-302(2), except Subsection 58-31b-302(2)(e); and

(b) produce evidence acceptable to the division and the board that the nursing education program completed by the applicant is equivalent to the minimum standards established by the division in collaboration with the board for an approved licensed practical nursing education program.

(2) An applicant for licensure as a registered nurse shall:

(a) meet all requirements of Subsection 58-31b-302(3), except Subsection 58-31b-302(3)(e); and

(b) (i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or

(ii) produce evidence acceptable to the division and the board that the applicant is

## SB0043S07 compared with SB0043S06

currently licensed as a registered nurse in one of the states, territories, or the District of Columbia of the United States or in Canada and has passed the NCLEX-RN examination in English.

Section 74. Section **58-31b-503** is amended to read:

### **58-31b-503. Penalties and administrative actions for unlawful conduct and unprofessional conduct.**

(1) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A misdemeanor.

(3) Any person who violates any of the unlawful conduct provisions specifically defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.

(4) (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts of unprofessional or unlawful conduct, the division may:

- (i) assess administrative penalties; and
- (ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited [~~in~~] into the "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.

(5) If a licensee has been convicted of violating Section 58-31b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(6) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:

(i) promptly issue a citation to the person according to this chapter and any pertinent administrative rules;

## SB0043S07 compared with SB0043S06

(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) Any person who is in violation of a provision described in Subsection (6)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding may be assessed a fine:

(i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; and

(ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter 1, Division of ~~Occupational and~~ Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to those provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-31b-401 may not be assessed through a citation.

(d) Each citation issued under this section shall:

(i) be in writing; and

(ii) clearly describe or explain:

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

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

(C) the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation; and

(iii) be served upon any person upon whom a summons may be served:

(A) in accordance with the Utah Rules of Civil Procedure;

(B) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(C) by mail.

(e) If within 20 calendar days from the service of a citation, the person to whom the

## **SB0043S07 compared with SB0043S06**

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. The period to contest the citation may be extended by the division for cause.

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

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

(h) No citation may be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

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

(i) 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 a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 75. Section **58-37-2** is amended to read:

### **58-37-2. Definitions.**

(1) As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent;

or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a motor carrier, public warehouseman, or employee of any of them.

## **SB0043S07 compared with SB0043S06**

(c) "Consumption" means ingesting or having any measurable amount of a controlled substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a controlled substance.

(d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

(e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

(f) (i) "Controlled substance" means a drug or substance:

(A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

(B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513;

(C) that is a controlled substance analog; or

(D) listed in Section 58-37-4.2.

(ii) "Controlled substance" does not include:

(A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B, Alcoholic Beverage Control Act;

(B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(C) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which:

## **SB0043S07 compared with SB0043S06**

(I) are not otherwise regulated by law; and

(II) may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(g) (i) "Controlled substance analog" means:

(A) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of Section 58-37-4, a substance listed in Section 58-37-4.2, or in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513;

(B) a substance which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

(C) A substance which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513.

(ii) "Controlled substance analog" does not include:

(A) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,

## **SB0043S07 compared with SB0043S06**

norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(F) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(h) (i) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea, whether guilty or no contest, for any offense proscribed by:

- (A) Chapter 37, Utah Controlled Substances Act;
- (B) Chapter 37a, Utah Drug Paraphernalia Act;
- (C) Chapter 37b, Imitation Controlled Substances Act;
- (D) Chapter 37c, Utah Controlled Substance Precursor Act; or
- (E) Chapter 37d, Clandestine Drug Lab Act; or

(ii) for any offense under the laws of the United States and any other state which, if committed in this state, would be an offense under:

- (A) Chapter 37, Utah Controlled Substances Act;
- (B) Chapter 37a, Utah Drug Paraphernalia Act;
- (C) Chapter 37b, Imitation Controlled Substances Act;
- (D) Chapter 37c, Utah Controlled Substance Precursor Act; or
- (E) Chapter 37d, Clandestine Drug Lab Act.

(i) "Counterfeit substance" means:

(i) any controlled substance or container or labeling of any controlled substance that:

(A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a controlled substance distributed by any other manufacturer, distributor, or dispenser; and

(B) a reasonable person would believe to be a controlled substance distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled substance; or



## SB0043S07 compared with SB0043S06

(ii) any substance other than under Subsection (1)(i)(i) that:

(A) is falsely represented to be any legally or illegally manufactured controlled substance; and

(B) a reasonable person would believe to be a legal or illegal controlled substance.

(j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not an agency relationship exists.

(k) "Department" means the Department of Commerce.

(l) "Depressant or stimulant substance" means:

(i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid;

(ii) a drug which contains any quantity of:

(A) amphetamine or any of its optical isomers;

(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated habit-forming because of its stimulant effect on the central nervous system;

(iii) lysergic acid diethylamide; or

(iv) any drug which contains any quantity of a substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(m) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order or prescription of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or compounding necessary to prepare the substance for delivery.

(n) "Dispenser" means a pharmacist who dispenses a controlled substance.

(o) "Distribute" means to deliver other than by administering or dispensing a controlled substance or a listed chemical.

(p) "Distributor" means a person who distributes controlled substances.

(q) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103.

## **SB0043S07 compared with SB0043S06**

(r) (i) "Drug" means:

(A) a substance recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(D) substances intended for use as a component of any substance specified in Subsections (1)(r)(i)(A), (B), and (C).

(ii) "Drug" does not include dietary supplements.

(s) "Drug dependent person" means any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so dependent upon the use of controlled substances as to have lost the power of self-control with reference to the individual's dependency.

(t) "Food" means:

(i) any nutrient or substance of plant, mineral, or animal origin other than a drug as specified in this chapter, and normally ingested by human beings; and

(ii) foods for special dietary uses as exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and overweight; uses for supplying a particular dietary need which exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food. Any particular use of a food is a special dietary use regardless of the nutritional purposes.

(u) "Immediate precursor" means a substance which the Attorney General of the United States has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance, or which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled

## SB0043S07 compared with SB0043S06

substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(v) "Indian" means a member of an Indian tribe.

(w) "Indian religion" means any religion:

(i) the origin and interpretation of which is from within a traditional Indian culture or community; and

(ii) which is practiced by Indians.

(x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village, which is legally recognized as eligible for and is consistent with the special programs, services, and entitlements provided by the United States to Indians because of their status as Indians.

(y) "Manufacture" means the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

(z) "Manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(aa) (i) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not, including:

(A) seeds;

(B) resin extracted from any part of the plant, including the resin extracted from the mature stalks;

(C) every compound, manufacture, salt, derivative, mixture, or preparation of the plant, seeds, or resin; and

(D) any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active.

(ii) "Marijuana" does not include:

(A) the mature stalks of the plant;

(B) fiber produced from the stalks;

## **SB0043S07 compared with SB0043S06**

(C) oil or cake made from the seeds of the plant;

(D) except as provided in Subsection (1)(aa)(i), any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil or cake;

(E) the sterilized seed of the plant which is incapable of germination; or

(F) any compound, mixture, or preparation approved by the federal Food and Drug Administration under the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq. that is not listed in a schedule of controlled substances in Section 58-27-4 or in the federal Controlled Substances Act, Title II, P.L. 91-513.

(bb) "Money" means officially issued coin and currency of the United States or any foreign country.

(cc) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) opium, coca leaves, and opiates;

(ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(iii) opium poppy and poppy straw; or

(iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the substance, which is chemically identical with any of the substances referred to in Subsection (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(dd) "Negotiable instrument" means documents, containing an unconditional promise to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

(ee) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(ff) "Opium poppy" means the plant of the species *papaver somniferum* L., except the seeds of the plant.

(gg) "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

## **SB0043S07 compared with SB0043S06**

(hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ii) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

(jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(kk) "Prescribe" means to issue a prescription:

(i) orally or in writing; or

(ii) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

(ll) "Prescription" means an order issued:

(i) by a licensed practitioner, in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and

(ii) for a controlled substance or other prescription drug or device for use by a patient or an animal.

(mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

(oo) "State" means the state of Utah.

## **SB0043S07 compared with SB0043S06**

(pp) "Ultimate user" means any person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administration to an animal owned by the person or a member of the person's household.

(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.

Section 76. Section **58-37-6** is amended to read:

**58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.**

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules I through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules I through V within this state shall obtain a license issued by the division.

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

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules I through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:

## **SB0043S07 compared with SB0043S06**

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the agent or employee's business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of the person's employer's registered and licensed place of business;

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses a controlled substance in the usual course of the person's business or employment; and

(iii) an ultimate user, or a person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The division may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if waiving the license requirement is consistent with public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The division may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3) (a) (i) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest.

(ii) The division may not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance except under Subsection (3)(a)(i).

(iii) In determining public interest under this Subsection (3)(a), the division shall consider whether the applicant has:

(A) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into channels other than legitimate medical, scientific, or industrial channels;

## **SB0043S07 compared with SB0043S06**

(B) complied with applicable state and local law;

(C) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(D) past experience in the manufacture of controlled dangerous substances;

(E) established effective controls against diversion; and

(F) complied with any other factors that the division establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon providing the division with evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.



## **SB0043S07 compared with SB0043S06**

(e) The division shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4) (a) Any license issued pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense controlled substances;

(v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice;

or

(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of

## SB0043S07 compared with SB0043S06

[Occupational and] Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of [Occupational and] Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

(5) (a) A person licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

## **SB0043S07 compared with SB0043S06**

(b) (i) A physician, dentist, naturopathic physician, veterinarian, practitioner, or other individual who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by the individual and a record of all drugs administered, dispensed, or professionally used by the individual otherwise than by a prescription.

(ii) An individual using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the individual keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by the individual, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7) (a) An individual may not write or authorize a prescription for a controlled substance unless the individual is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) An individual other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, an individual may not issue, fill, compound, or dispense a prescription for a controlled substance unless the

## **SB0043S07 compared with SB0043S06**

prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(i) the individual who writes the prescription is licensed under Subsection (2); and

(ii) the prescribed controlled substance is to be used in research.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the restrictions of this Subsection (7)(f).

(i) A prescription for a Schedule II substance may not be refilled.

(ii) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(iii) (A) A prescription for a Schedule II or Schedule III controlled substance that is an opiate and that is issued for an acute condition shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed on the daily dosage rate of the prescription.

(B) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or chronic conditions which are documented as being complex or chronic in the medical record.

(C) A pharmacist is not required to verify that a prescription is in compliance with Subsection (7)(f)(iii).

(iv) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(v) All other controlled substances in Schedule V may be refilled as the prescriber's

## **SB0043S07 compared with SB0043S06**

prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(vi) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.

(vii) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply; and

(C) a second or third prescription shall include the date of issuance and the date for dispensing.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in

## **SB0043S07 compared with SB0043S06**

Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of Subsection (7)(h), "child" has the same meaning as defined in Section 80-1-102, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) into the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

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

## **SB0043S07 compared with SB0043S06**

(A) referring the matter to a collection agency; or

(B) 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.

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

(v) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section 58-37-4.2.

(11) (a) As used in this Subsection (11):

(i) "High risk prescription" means a prescription for an opiate or a benzodiazepine that is written to continue for longer than 30 consecutive days.

(ii) "Database" means the controlled substance database created in Section 58-37f-201.

(b) A practitioner who issues a high risk prescription to a patient shall, before issuing the high risk prescription to the patient, verify in the database that the patient does not have a high risk prescription from a different practitioner that is currently active.

(c) If the database shows that the patient has received a high risk prescription that is currently active from a different practitioner, the practitioner may not issue a high risk prescription to the patient unless the practitioner:

## **SB0043S07 compared with SB0043S06**

(i) contacts and consults with each practitioner who issued a high risk prescription that is currently active to the patient;

(ii) documents in the patient's medical record that the practitioner made contact with each practitioner in accordance with Subsection (11)(c)(i); and

(iii) documents in the patient's medical record the reason why the practitioner believes that the patient needs multiple high risk prescriptions from different practitioners.

(d) A practitioner shall satisfy the requirement described in Subsection (11)(c) in a timely manner, which may be after the practitioner issues the high risk prescription to the patient.

Section 77. Section **58-37-8** is amended to read:

### **58-37-8. Prohibited acts -- Penalties.**

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for a person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in a violation of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) A person convicted of violating Subsection (1)(a) with respect to:



## **SB0043S07 compared with SB0043S06**

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than:

(A) seven years and which may be for life; or

(B) 15 years and which may be for life if the trier of fact determined that the defendant knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under 18 years old.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the offense, was under 18 years old.

(e) The Administrative Office of the Courts shall report to the Division of [~~Occupational and~~] Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (1)(a).

## **SB0043S07 compared with SB0043S06**

(2) Prohibited acts B -- Penalties and reporting:

(a) It is unlawful:

(i) for a person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for an owner, tenant, licensee, or person in control of a building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for a person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) A person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

or

(ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and on a third or subsequent conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based is guilty of a third degree felony.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) A person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

(i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.

(ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.

## SB0043S07 compared with SB0043S06

(e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance, except for 11-nor-9-carboxy-tetrahydrocannabinol; and

(ii) (A) if the controlled substance is not marijuana, operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another; or

(B) if the controlled substance is marijuana, operates a motor vehicle as defined in Section 76-5-207 in a criminally negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in

## SB0043S07 compared with SB0043S06

Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) except as provided in Subsection (2)(g)(ii)(B), marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) a controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection(2)(g) whether or not the injuries arise from the same episode of driving.

(j) The Administrative Office of the Courts shall report to the Division of ~~Occupational and~~ Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for a person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make a false or forged prescription or written order for a controlled substance, or to utter the same, or to alter a prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or

## SB0043S07 compared with SB0043S06

device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render a drug a counterfeit controlled substance.

(b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.

(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.

(c) A violation of Subsection (3)(a)(iv) is a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;

(iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years [~~of age~~ old], regardless of where the act occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would

## **SB0043S07 compared with SB0043S06**

otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d) (i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that:

(i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or

(ii) the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

## **SB0043S07 compared with SB0043S06**

(b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:

(i) from a separate criminal episode than the current charge; and

(ii) from a conviction that is separate from any other conviction used to enhance the current charge.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu of, a civil or administrative penalty or sanction authorized by law.

(b) When a violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) a person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) a law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Section 58-37-2.

(b) In a prosecution alleging violation of this section regarding peyote as defined in

## **SB0043S07 compared with SB0043S06**

Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days before trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person was:

(i) engaged in medical research; and

(ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.

(16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;



## **SB0043S07 compared with SB0043S06**

(ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

(b) The offenses referred to in Subsection (16)(a) are:

(i) the possession or use of less than 16 ounces of marijuana;

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.

(c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

## **SB0043S07 compared with SB0043S06**

(19) If a minor who is under 18 years old is found by a court to have violated this section, the court may order the minor to complete:

- (a) a screening as defined in Section 41-6a-501;
- (b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as indicated by an assessment.

Section 78. Section **58-37c-5** is amended to read:

### **58-37c-5. Responsibility of Department of Commerce -- Delegation to the Division of Professional Licensing -- Rulemaking authority of the division.**

(1) Responsibility for the enforcement of the licensing and reporting provisions of this chapter shall be with the Department of Commerce.

(2) The executive director shall delegate specific responsibility within the department to the Division of [~~Occupational and~~] Professional Licensing.

(3) The division shall make, adopt, amend, and repeal rules necessary for the proper administration and enforcement of this chapter.

Section 79. Section **58-37c-6** is amended to read:

### **58-37c-6. Division duties.**

The division shall be responsible for the licensing and reporting provisions of this chapter and those duties shall include:

- (1) providing for a system of licensure of regulated distributors and regulated purchasers;
- (2) refusing to renew a license or revoking, suspending, restricting, placing on probation, issuing a private or public letter of censure or reprimand, or imposing other appropriate action against a license;
- (3) with respect to the licensure and reporting provisions of this chapter, investigating or causing to be investigated any violation of this chapter by any person and to cause, when necessary, appropriate administrative action with respect to the license of that person;
- (4) presenting evidence obtained from investigations conducted by appropriate county attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee;

## SB0043S07 compared with SB0043S06

(5) conducting hearings for the purpose of revoking, suspending, placing on probation, or imposing other appropriate administrative action against the license of regulated distributors or regulated purchasers in accordance with the provisions of Title 58, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, and Title 63G, Chapter 4, Administrative Procedures Act;

(6) assisting all other law enforcement agencies of the state in enforcing all laws regarding controlled substance precursors;

(7) specifying reports, frequency of reports, and conditions under which reports are to be submitted and to whom reports are to be submitted by regulated distributors and regulated purchasers with respect to transactions involving threshold amounts of controlled substance precursors; and

(8) performing all other functions necessary to fulfill division duties and responsibilities as outlined under this chapter or rules adopted pursuant to this chapter.

Section 80. Section **58-37c-21** is amended to read:

### **58-37c-21. Department of Public Safety enforcement authority.**

(1) As used in this section, "division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

(2) The division has authority to enforce this chapter. To carry out this purpose, the division may:

(a) inspect, copy, and audit records, inventories of controlled substance precursors, and reports required under this chapter and rules adopted under this chapter;

(b) enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections;

(c) assist the law enforcement agencies of the state in enforcing this chapter;

(d) conduct investigations to enforce this chapter;

(e) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and

(f) work in cooperation with the Division of [~~Occupational and~~] Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Section 81. Section **58-37d-9** is amended to read:

## **SB0043S07 compared with SB0043S06**

### **58-37d-9. Department of Public Safety enforcement authority.**

(1) As used in this section, "division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

(2) The division has authority to enforce this chapter. To carry out this purpose, the division may:

(a) assist the law enforcement agencies of the state in enforcing this chapter;

(b) conduct investigations to enforce this chapter;

(c) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and

(d) work in cooperation with the Division of [~~Occupational and~~] Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Section 82. Section **58-38a-201** is amended to read:

### **58-38a-201. Controlled Substances Advisory Committee.**

There is created within the Division of [~~Occupational and~~] Professional Licensing the Controlled Substances Advisory Committee. The committee consists of:

(1) the director of the Department of Health or the director's designee;

(2) the State Medical Examiner or the examiner's designee;

(3) the commissioner of the Department of Public Safety or the commissioner's designee;

(4) the director of the Bureau of Forensic Services created in Section 53-10-401, or the director's designee;

(5) the director of the Utah Poison Control Center or the director's designee;

(6) one physician who is a member of the Physicians Licensing Board and is designated by that board;

(7) one pharmacist who is a member of the Utah State Board of Pharmacy and is designated by that board;

(8) one dentist who is a member of the Dentist and Dental Hygienist Licensing Board and is designated by that board;

(9) one physician who is currently licensed and practicing in the state, to be appointed by the governor;

## SB0043S07 compared with SB0043S06

(10) one psychiatrist who is currently licensed and practicing in the state, to be appointed by the governor;

(11) one individual with expertise in substance abuse addiction, to be appointed by the governor;

(12) one representative from the Statewide Association of Prosecutors, to be designated by that association;

(13) one naturopathic physician who is currently licensed and practicing in the state, to be appointed by the governor;

(14) one advanced practice registered nurse who is currently licensed and practicing in this state, to be appointed by the governor; and

(15) one member of the public, to be appointed by the governor.

Section 83. Section **58-41-4** is amended to read:

### **58-41-4. Exemptions from chapter.**

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of speech-language pathology and audiology subject to the stated circumstances and limitations without being licensed under this chapter:

(a) a qualified person licensed in this state under any law existing in this state prior to May 13, 1975, engaging in the profession for which ~~[he]~~ the person is licensed;

(b) a medical doctor, physician, physician assistant, or surgeon licensed in this state, engaging in his or her specialty in the practice of medicine;

(c) a hearing aid dealer or ~~[salesman from]~~ salesperson selling, fitting, adjusting, and repairing hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid dealer may not conduct audiologic testing on persons ~~[under the age of 18 years]~~ younger than 18 years old except under the direct supervision of an audiologist licensed under this chapter;

(d) a person who has obtained a valid and current credential issued by the State Board of Education while specifically performing [specifically] the functions of a speech-language pathologist or audiologist~~[- in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and only in the academic interest of the schools by which employed in this state]~~ solely within the confines of, under the direction and jurisdiction of, and in the academic interest of the school employing the person;

## SB0043S07 compared with SB0043S06

(e) a person employed as a speech-language pathologist or audiologist by federal government agencies or subdivisions or, prior to July 1, 1989, by state or local government agencies or subdivisions, while specifically performing speech-language pathology or audiology services [~~in no way in his own interest,~~] solely within the confines of [~~and~~],<sub>2</sub> under the direction and jurisdiction of,<sub>2</sub> and in the specific interest of [~~that~~] the agency or subdivision;

(f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or monetary or other compensation, without being licensed[~~;~~ ~~however, such person may elect to be subject to the requirements of this chapter~~];

(g) a person employed by an accredited [~~colleges or universities~~] college or university as a speech-language pathologist or audiologist [~~from~~] performing the services or functions described in this chapter [~~when they~~] if the services or functions are:

(i) performed solely as an assigned teaching function of the person's employment;

(ii) solely in academic interest and pursuit as a function of [~~that~~] the person's employment;

(iii) in no way for [~~their~~] the person's own interest; and

(iv) provided for no fee, monetary or otherwise, other than [~~their~~] the person's agreed institutional salary;

(h) a person pursuing a course of study leading to a degree in speech-language pathology or audiology while enrolled in an accredited college or university, provided:

(i) those activities constitute an assigned, directed, and supervised part of [~~his~~] the person's curricular study, and in no other interest[~~,~~ ~~and~~];

(ii) that all examinations, tests, histories, charts, progress notes, reports, correspondence, [~~and all~~] documents,<sub>2</sub> and records [~~which he~~] the person produces be identified clearly as having been conducted and prepared by a student in training [~~and that such a~~];

(iii) that the person is obviously identified and designated by appropriate title clearly indicating the person's training status; and [~~provided that he~~]

(iv) that the person does not hold [~~himself~~] out directly or indirectly [~~as being~~] to the public or otherwise represent that the person is qualified to practice independently;

(i) a person trained in elementary audiometry and qualified to perform basic audiometric tests while employed by and under the direct supervision of a licensed medical doctor to perform solely for [~~him while under his direct supervision,~~] the licensed medical

## SB0043S07 compared with SB0043S06

doctor, the elementary conventional audiometric tests of air conduction screening, air conduction threshold testing, and tympanometry;

(j) a person [~~while performing as a~~] performing the functions of a speech-language pathologist or audiologist for the sole purpose of obtaining required professional experience under the provisions of this chapter and only during the period the person is obtaining the required professional experience, if [~~he~~] the person:

(i) meets all training requirements; and

(ii) is professionally responsible to and under the supervision of a speech-language pathologist or audiologist who holds the CCC or a state license in speech-language pathology or audiology[~~. This provision is applicable only during the time that person is obtaining the required professional experience~~];

(k) a corporation, partnership, trust, association, group practice, or [~~like~~] similar organization engaging in speech-language pathology or audiology services without certification or license, if [~~it acts~~] acting only through employees or [~~consists~~] consisting only of persons who are licensed under this chapter;

(l) [~~performance of~~] a person who is not a resident of this state performing speech-language pathology or audiology services in this state [~~by a speech-language pathologist or audiologist who is not a resident of this state and is not licensed under this chapter if those~~] if:

(i) the services are performed for no more than one month in any calendar year in association with a speech-language pathologist or audiologist licensed under this chapter[~~, and if that~~]; and

(ii) the person meets the qualifications and requirements for application for licensure described in Section 58-41-5; [and]

(m) a person certified under Title 53E, Public Education System -- State Administration, as a teacher of the deaf, from providing the services or performing the functions [~~he~~] the person is certified to perform[~~;~~]; and

(n) a person who is:

(i) trained in newborn hearing screening as described in rules made by the Department of Health in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) is working under the indirect supervision of a licensed audiologist responsible for a

## SB0043S07 compared with SB0043S06

newborn hearing screening program established by the Department of Health under Section 26-10-6.

(2) No person is exempt from the requirements of this chapter who performs or provides any services as a speech-language pathologist or audiologist for which a fee, salary, bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who engages any part of his professional work for a fee practicing in conjunction with, by permission of, or apart from his position of employment as speech-language pathologist or audiologist in any branch or subdivision of local, state, or federal government or as otherwise identified in this section.

Section 84. Section **58-44a-302** is amended to read:

### **58-44a-302. Qualifications for licensure.**

(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)]~~ (c) 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)]~~ (d) have completed:

(i) a certified nurse midwifery education program accredited by the 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 Accreditation Commission for Midwifery Education, as demonstrated by a graduate's being accepted to sit for the national certifying examination administered by the Accreditation Commission for Midwifery Education or its designee; and

~~[(f)]~~ (e) 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)]~~ (1)(d).

(2) For purposes of Subsection ~~[(1)(e)]~~ (1)(d), as of January 1, 2010, the accredited education program or it's equivalent must grant a graduate degree, including post-master's



## **SB0043S07 compared with SB0043S06**

certificate, in nurse midwifery.

Section 85. Section **58-44a-402** is amended to read:

### **58-44a-402. Authority to assess penalty.**

(1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.

(2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

(3) The division may impose an administrative penalty of up to \$500 for any violation of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

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

(i) 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 a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 86. Section **58-55-102** is amended to read:

### **58-55-102. Definitions.**

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

(1) (a) "Alarm business or company" means a person engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system, except as provided in Subsection (1)(b).

(b) "Alarm business or company" does not include:

(i) a person engaged in the manufacture or sale of alarm systems unless:

(A) that person is also engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring of alarm systems;

(B) the manufacture or sale occurs at a location other than a place of business established by the person engaged in the manufacture or sale; or

## **SB0043S07 compared with SB0043S06**

(C) the manufacture or sale involves site visits at the place or intended place of installation of an alarm system; or

(ii) an owner of an alarm system, or an employee of the owner of an alarm system who is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of the alarm system owned by that owner.

(2) "Alarm company agent":

(a) except as provided in Subsection (2)(b), means any individual employed within this state by an alarm business; and

(b) does not include an individual who:

(i) is not engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system; and

(ii) does not, during the normal course of the individual's employment with an alarm business, use or have access to sensitive alarm system information.

(3) "Alarm system" means equipment and devices assembled for the purpose of:

(a) detecting and signaling unauthorized intrusion or entry into or onto certain premises; or

(b) signaling a robbery or attempted robbery on protected premises.

(4) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under the immediate supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.

(5) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under the immediate supervision of a master plumber, residential master plumber, journeyman plumber, or a residential journeyman plumber.

(6) "Approved continuing education" means instruction provided through courses under a program established under Subsection 58-55-302.5(2).

(7) (a) "Approved prelicensure course provider" means a provider that is the Associated General Contractors of Utah, the Utah Chapter of the Associated Builders and Contractors, or the Utah Home Builders Association, and that meets the requirements established by rule by the commission with the concurrence of the director, to teach the

## **SB0043S07 compared with SB0043S06**

25-hour course described in Subsection 58-55-302(1)(e)(iii).

(b) "Approved preclicensure course provider" may only include a provider that, in addition to any other locations, offers the 25-hour course described in Subsection 58-55-302(1)(e)(iii) at least six times each year in one or more counties other than Salt Lake County, Utah County, Davis County, or Weber County.

(8) "Board" means the Electrician Licensing Board, Alarm System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

(9) "Combustion system" means an assembly consisting of:

(a) piping and components with a means for conveying, either continuously or intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the appliance;

(b) the electric control and combustion air supply and venting systems, including air ducts; and

(c) components intended to achieve control of quantity, flow, and pressure.

(10) "Commission" means the Construction Services Commission created under Section 58-55-103.

(11) "Construction trade" means any trade or occupation involving:

(a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property; and

(ii) constructing, remodeling, or repairing a manufactured home or mobile home as defined in Section 15A-1-302; or

(b) installation or repair of a residential or commercial natural gas appliance or combustion system.

(12) "Construction trades instructor" means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of the instructor, who has no economic interest in the project.

(13) (a) "Contractor" means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

## **SB0043S07 compared with SB0043S06**

(i) a person who builds any structure on the person's own property for the purpose of sale or who builds any structure intended for public use on the person's own property;

(ii) any person who represents that the person is a contractor, or will perform a service described in this Subsection (13), by advertising on a website or social media, or any other means;

(iii) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";

(iv) any person engaged in, or offering to engage in, any construction trade for which licensure is required under this chapter; or

(v) a construction manager, construction consultant, construction assistant, or any other person who, for a fee:

(A) performs or offers to perform construction consulting;

(B) performs or offers to perform management of construction subcontractors;

(C) provides or offers to provide a list of subcontractors or suppliers; or

(D) provides or offers to provide management or counseling services on a construction project.

(b) "Contractor" does not include:

(i) an alarm company or alarm company agent; or

(ii) a material supplier who provides consulting to customers regarding the design and installation of the material supplier's products.

(14) (a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

(b) "Electrical trade" does not include:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring;

(iii) work commonly done by unskilled labor on any installations under the exclusive control of electrical utilities;

(iv) work involving cable-type wiring that does not pose a shock or fire-initiation hazard; or

(v) work involving class two or class three power-limited circuits as defined in the

## **SB0043S07 compared with SB0043S06**

National Electrical Code.

(15) "Elevator" means the same as that term is defined in Section 34A-7-202, except that for purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline platform lift.

(16) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under this chapter that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator.

(17) "Elevator mechanic" means an individual who is licensed under this chapter as an elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

(18) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.

(19) "Engage in a construction trade" means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(20) (a) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare.

(b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(21) "Gas appliance" means any device that uses natural gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

(22) (a) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that

## SB0043S07 compared with SB0043S06

construction except plumbing, electrical work, mechanical work, work related to the operating integrity of an elevator, and manufactured housing installation, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(b) The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(23) (a) "General electrical contractor" means a person licensed under this chapter as a general electrical contractor qualified by education, training, experience, and knowledge to perform the fabrication, construction, and installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus that uses electrical energy.

(b) The scope of work of a general electrical contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(24) (a) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform or superintend construction of fixed works or components of fixed works requiring specialized engineering knowledge and skill in any of the following: [~~irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works.~~]

(i) irrigation;

(ii) drainage;

(iii) water power;

(iv) water supply;

(v) flood control;

## SB0043S07 compared with SB0043S06

- (vi) an inland waterway;
- (vii) a harbor;
- (viii) a railroad;
- (ix) a highway;
- (x) a tunnel;
- (xi) an airport;
- (xii) an airport runway;
- (xiii) a sewer;
- (xiv) a bridge;
- (xv) a refinery;
- (xvi) a pipeline;
- (xvii) a chemical plant;
- (xviii) an industrial plant;
- (xix) a pier;
- (xx) a foundation;
- (xxi) a power plant; or
- (xxii) a utility plant or installation.

(b) A general engineering contractor may not perform [~~construction of structures~~] or superintend:

(i) construction of a structure built primarily for the support, shelter, and enclosure of persons, animals, and chattels[-]; or

(ii) performance of:

(A) plumbing work;

(B) electrical work; or

(C) mechanical work.

(25) (a) "General plumbing contractor" means a person licensed under this chapter as a general plumbing contractor qualified by education, training, experience, and knowledge to perform the fabrication or installation of material and fixtures to create and maintain sanitary conditions in a building by providing permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the

## **SB0043S07 compared with SB0043S06**

occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and industrial purposes.

(b) The scope of work of a general plumbing contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(26) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person:

- (a) as the division specifies in rule;
- (b) by, as applicable, a qualified electrician or plumber;
- (c) as part of a planned program of training; and
- (d) to ensure that the end result complies with applicable standards.

(27) "Individual" means a natural person.

(28) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(29) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(30) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

(31) "Master plumber" means a person licensed under this chapter as a master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade.

(32) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(33) (a) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within three feet beyond the outside walls of buildings, of pipes, fixtures, and fittings for the:

- (i) delivery of the water supply;



## **SB0043S07 compared with SB0043S06**

- (ii) discharge of liquid and water carried waste;
- (iii) building drainage system within the walls of the building; and
- (iv) delivery of gases for lighting, heating, and industrial purposes.

(b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes, fixtures and fixture traps, soil, waste and vent pipes, the building drain and roof drains, and the safe and adequate supply of gases, together with their devices, appurtenances, and connections where installed within the outside walls of the building.

(34) "Ratio of apprentices" means the number of licensed plumber apprentices or licensed electrician apprentices that are allowed to be under the immediate supervision of a licensed supervisor as established by the provisions of this chapter and by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(35) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(36) "Residential building," as it relates to the license classification of residential journeyman plumber and residential master plumber, means a single or multiple family dwelling of up to four units.

(37) (a) "Residential electrical contractor" means a person licensed under this chapter as a residential electrical contractor qualified by education, training, experience, and knowledge to perform the fabrication, construction, and installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances, and fixtures in a residential unit.

## **SB0043S07 compared with SB0043S06**

(b) The scope of work of a residential electrical contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(38) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

(39) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

(40) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

(41) "Residential master plumber" means a person licensed under this chapter as a residential master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade as limited to the plumbing of residential buildings.

(42) (a) "Residential plumbing contractor" means a person licensed under this chapter as a residential plumbing contractor qualified by education, training, experience, and knowledge to perform the fabrication or installation of material and fixtures to create and maintain sanitary conditions in residential buildings by providing permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and [~~industrial~~] residential purposes.

(b) The scope of work of a residential plumbing contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(43) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules

## **SB0043S07 compared with SB0043S06**

and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

(44) "Sensitive alarm system information" means:

(a) a pass code or other code used in the operation of an alarm system;

(b) information on the location of alarm system components at the premises of a customer of the alarm business providing the alarm system;

(c) information that would allow the circumvention, bypass, deactivation, or other compromise of an alarm system of a customer of the alarm business providing the alarm system; and

(d) any other similar information that the division by rule determines to be information that an individual employed by an alarm business should use or have access to only if the individual is licensed as provided in this chapter.

(45) (a) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill, the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare.

(b) A specialty contractor may perform work in crafts or trades other than those in which the specialty contractor is licensed if they are incidental to the performance of the specialty contractor's licensed craft or trade.

(46) "Unincorporated entity" means an entity that is not:

(a) an individual;

(b) a corporation; or

(c) publicly traded.

(47) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-55-501.

(48) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-55-502 and as may be further defined by rule.

(49) "Wages" means amounts due to an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

## **SB0043S07 compared with SB0043S06**

Section 87. 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) meet the examination requirements established by this section and by rule by the commission with the concurrence of the director, which requirements include:

(i) for licensure as an apprentice electrician, apprentice plumber, or specialty contractor, no division-administered examination is required;

(ii) for licensure as a general building contractor, general engineering contractor, residential and small commercial contractor, general plumbing contractor, residential plumbing contractor, general electrical contractor, or residential electrical contractor, the only required division-administered examination is a division-administered examination that covers information from the 25-hour course described in Subsection (1)(e)(iii), which course may have been previously completed as part of applying for any other license under this chapter, and, if the 25-hour course was completed on or after July 1, 2019, the five-hour business law course described in Subsection (1)(e)(iv); and

(iii) if required in Section 58-55-304, an individual qualifier must pass the required division-administered 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) except as provided in Subsection (2)(a), and except that no employment experience is required for licensure as a specialty contractor, two years full-time paid employment experience in the construction industry, which employment experience, unless more specifically described in this section, may be related to any contracting classification and does not have to include supervisory experience; 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;

## **SB0043S07 compared with SB0043S06**

(iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a 25-hour course established by rule by the commission with the concurrence of the director, which is taught by an approved prelicensure course provider, and which course may include:

(A) construction business practices;

(B) bookkeeping fundamentals;

(C) mechanics lien fundamentals;

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

(E) for no additional fee, a provider-administered examination at the end of the 25-hour course;

(iv) complete a five-hour business and law course established by rule by the commission with the concurrence of the director, which is taught by an approved prelicensure course provider, if an applicant for licensure as a general building contractor, general engineering contractor, residential and small commercial contractor, general plumbing contractor, residential plumbing contractor, general electrical contractor, or residential electrical contractor, except that if the 25-hour course described in Subsection (1)(e)(iii) was completed before July 1, 2019, the applicant does not need to take the business and law course;

(v) (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

(vi) 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:

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

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

## **SB0043S07 compared with SB0043S06**

(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2) (a) If the applicant for a contractor's license described in Subsection (1) is a building inspector, the applicant may satisfy Subsection (1)(e)(ii)(A) by producing satisfactory evidence of two years full-time paid employment experience as a building inspector, which shall include at least one year full-time experience as a licensed combination inspector.

(b) The applicant shall file the following with the division before the division issues the license:

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

(ii) 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

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

(A) Department of Commerce;

(B) Division of Corporations and Commercial Code;

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

(D) State Tax Commission; and

(E) 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 for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3,

## **SB0043S07 compared with SB0043S06**

Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed master plumber.

(ii) An individual holding a valid Utah license as a journeyman plumber, based on at 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 for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed master residential plumber.

(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

## **SB0043S07 compared with SB0043S06**

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) meeting the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed journeyman plumber.

(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 for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed residential journeyman plumber.

(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 licensed residential journeyman plumber;

(ii) beginning in a licensed apprentice plumber's fourth year of training, a licensed apprentice plumber may work without supervision for a period not to exceed eight hours in any 24-hour period; and

(iii) rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the ratio of apprentices allowed under the immediate supervision of a licensed supervisor, including the ratio of apprentices in their fourth year of training or later that are allowed to be under the



## **SB0043S07 compared with SB0043S06**

immediate supervision of a licensed supervisor.

(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 for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed master electrician.

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

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

or

(ii) meets the qualifications for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a master residential electrician.

(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 for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge

## **SB0043S07 compared with SB0043S06**

and skills to be a licensed journeyman electrician.

(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 for expedited licensure as established by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that clearly demonstrate the applicant has the knowledge and skills to be a licensed residential journeyman electrician.

(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;

(ii) beginning in a licensed apprentice electrician's fourth year of training, a licensed apprentice electrician may work without supervision for a period not to exceed eight hours in any 24-hour period;

(iii) rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the ratio of apprentices allowed under the immediate supervision of a licensed supervisor, including the ratio of apprentices in their fourth year of training or later that are allowed to be under the immediate supervision of a licensed supervisor; and

(iv) a licensed supervisor may have up to three licensed apprentice electricians on a residential project, or more if established by rules made by the commission, in concurrence with the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(k) An alarm company applicant shall:

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

## **SB0043S07 compared with SB0043S06**

(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 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

## SB0043S07 compared with SB0043S06

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)]~~ (vii) 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)]~~ (viii) 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)]~~ (ix) 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

~~[(xi)]~~ (x) 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;

## SB0043S07 compared with SB0043S06

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

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

~~[(vi)] (v)~~ 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).

(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

## SB0043S07 compared with SB0043S06

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)]~~ For each applicant described in Subsection (3)(k) or (l), 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 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

## **SB0043S07 compared with SB0043S06**

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 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 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 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 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 more than two years before the date of the applicant's application; or

## **SB0043S07 compared with SB0043S06**

(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 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)(vi);

(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).



## SB0043S07 compared with SB0043S06

(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(23), (24), or (26) 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.

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

Section 88. Section **58-55-502** is amended to read:

### **58-55-502. Unprofessional conduct.**

Unprofessional conduct includes:

(1) failing to establish, maintain, or demonstrate financial responsibility while licensed

## SB0043S07 compared with SB0043S06

as a contractor under this chapter;

(2) disregarding or violating through gross negligence or a pattern of negligence:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of this state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or

(f) any reporting, notification, and filing laws of this state or the federal government;

(3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;

(4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:

(a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or the owner's duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;

(b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;

(c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;

(d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;

(e) failure to provide, when applicable, the information required by Section 38-11-108; and

(f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section

## SB0043S07 compared with SB0043S06

38-11-204;

(5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;

(6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311;

(7) failing to comply with operating standards established by rule in accordance with Section 58-55-308;

(8) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States;

(9) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity:

(a) workers' compensation coverage to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

(b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; ~~[or]~~

(10) the failure of an alarm company or alarm company agent to inform a potential customer, before the customer's purchase of an alarm system or alarm service from the alarm company, of the policy of the county, city, or town within which the customer resides relating to priority levels for responding to an alarm signal transmitted by the alarm system that the alarm company provides the customer[-]; or

(11) failing to continuously maintain insurance and registration as required under Subsection 58-55-302(2).

Section 89. Section **58-55-503** is amended to read:

### **58-55-503. Penalty for unlawful conduct -- Citations.**

(1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (16)(e), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), or who fails to comply with a citation issued under

## SB0043S07 compared with SB0043S06

this section after it is final, is guilty of a class A misdemeanor.

(ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of a licensee's license by the division and the commission include:

(a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and

(b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

(i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;

(ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4) (a) (i) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), [σ] (28), Subsection 58-55-502(4)(a) or (11), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(ii) A person who is in violation of the provisions of Subsection 58-55-308(2),

## **SB0043S07 compared with SB0043S06**

Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (16)(e), (18), (20), (21), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2).

(iii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b) (i) A citation shall be in writing and 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.

(ii) A citation shall 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.

(iii) A citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) A citation issued under this section, or a copy of a citation, may be served upon a person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or

(iii) by mail.

(d) (i) If within 20 calendar days after the day on which a citation is served, 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.

(e) 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 the citation becomes final.

(f) The failure of an applicant for licensure to comply with a citation after the citation

## SB0043S07 compared with SB0043S06

becomes final is a ground for denial of license.

(g) A citation may not be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

(h) (i) Except as provided in Subsections (4)(h)(ii) and (5), the director or the director's designee shall assess a fine in accordance with the following:

(A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

(B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

and

(C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.

(ii) Except as provided in Subsection (5), if a person violates Subsection 58-55-501(16)(e) or (28), the director or the director's designee shall assess a fine in accordance with the following:

(A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

(B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000;

and

(C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2); or

(B) (I) the division initiated an action for a first or second offense;

(II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),

## **SB0043S07 compared with SB0043S06**

(10), (12), (14), (16)(e), (18), (19), (23), (24), (25), (26), (27), (28), or Subsection 58-55-504(2); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(23) or (24) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(23), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(23) or (24) for each individual is considered a separate violation.

(5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

(7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

(b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

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

(d) In an action brought to collect a penalty, the court shall award reasonable attorney

## SB0043S07 compared with SB0043S06

fees and costs to the prevailing party.

Section 90. Section **58-56-2** is amended to read:

### **58-56-2. Chapter administration.**

The provisions of this chapter shall be administered by the Division of [~~Occupational~~ and] Professional Licensing.

Section 91. Section **58-57-14** is amended to read:

### **58-57-14. Unlawful conduct -- Penalty.**

(1) Beginning January 1, 2007, "unlawful conduct" includes:

(a) using the following titles, names, or initials, if the user is not properly licensed under this chapter:

- (i) respiratory care practitioner;
- (ii) respiratory therapist; and
- (iii) respiratory technician; and

(b) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter.

(2) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

(3) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and Subsection (1) of this section is guilty of a class A misdemeanor.

(4) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of [~~Occupational~~ and] Professional Licensing Act, the division may assess administrative penalties for acts of unprofessional or unlawful conduct or any other appropriate administrative action.

Section 92. Section **58-61-704** is amended to read:

### **58-61-704. Term of license or registration.**

(1) (a) The division shall issue each license under this part with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.



## **SB0043S07 compared with SB0043S06**

(2) At the time of renewal, the licensed individual shall show satisfactory evidence of renewal requirements as required under this part.

(3) Each license or registration expires on the expiration date shown on the license unless renewed by the licensed individual in accordance with Section 58-1-308.

(4) (a) A registration as a registered behavior specialist or a registered assistant behavior specialist:

(i) expires on the day the individual is no longer employed in accordance with Subsection 58-61-705(5)(d) or (6)(d); and

(ii) may not be renewed.

(b) The Department of Human Services, or an organization contracted with a division of the Department of Human Services, shall notify the Division of [~~Occupational and~~] Professional Licensing when a person registered under this part is no longer employed as a registered behavior specialist or a registered assistant behavior specialist.

Section 93. Section **58-63-102** is amended to read:

### **58-63-102. Definitions.**

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

(1) "Agreement for services" means a written and signed agreement between a security service provider and a client that:

(a) contains clear language that addresses and assigns financial responsibility;

(b) describes the length, duties, and scope of the security services that will be provided;

and

(c) describes the compensation that will be paid by the client for the security services, including the compensation for each security officer.

(2) "Armed courier service" means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed security officer employed by that service.

(3) "Armed private security officer" means an individual:

(a) employed by a contract security company;

(b) whose primary duty is:

(i) guarding personal or real property; or

(ii) providing protection or security to the life and well being of humans or animals;

## **SB0043S07 compared with SB0043S06**

and

(c) who wears, carries, possesses, or has immediate access to a firearm in the performance of the individual's duties.

(4) "Armored car company" means a person engaged in business under contract to others who transports or offers to transport tangible personal property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or any other high value items, that require secured delivery from one place to another under the control of an armored car security officer employed by the company using a specially equipped motor vehicle offering a high degree of security.

(5) "Armored car security officer" means an individual:

(a) employed by an armored car company;

(b) whose primary duty is to guard the tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another; and

(c) who wears, carries, possesses, or has immediate access to a firearm in the performance of the individual's duties.

(6) "Board" means the Security Services Licensing Board created in Section 58-63-201.

(7) "Client" means a person, company, or entity that contracts for and receives security services from a contract security company or an armored car company.

(8) "Contract security company" means a company that is registered with the Division of Corporations and Commercial Code and is engaged in business to provide security services to another person, business, or entity on a contractual basis by assignment of an armed or unarmed private security officer.

(9) "Corporate officer" means an individual who is on file with the Division of Corporations and Commercial Code as:

(a) a corporate officer of a contract security company or an armored car company that is a corporation; or

(b) a sole proprietor of a contract security company or an armored car company that is not a corporation.

(10) "Financial responsibility," when referring to a contract security company, means

## **SB0043S07 compared with SB0043S06**

that a contract security company may only provide security services to a client if the contract security company:

- (a) enters into an agreement for services with the client;
- (b) maintains a current general liability insurance policy with:
  - (i) at least an annual \$1,000,000 per occurrence limit;
  - (ii) at least an annual \$2,000,000 aggregate limit; and
  - (iii) the following riders:
    - (A) general liability;
    - (B) assault and battery;
    - (C) personal injury;
    - (D) false arrest;
    - (E) libel and slander;
    - (F) invasion of privacy;
    - (G) broad form property damage;
    - (H) damage to property in the care, custody, or control of the security service provider;

and

- (I) errors and omissions;
- (c) maintains a workers' compensation insurance policy with at least a \$1,000,000 per occurrence limit and that covers each security officer employed by the contract security company; and
- (d) maintains a federal employer identification number and an unemployment insurance employer account as required under state and federal law.

(11) "Identification card" means a personal pocket or wallet size card issued by the division to each armored car and armed or unarmed private security officer licensed under this chapter.

(12) "Law enforcement agency" means the same as that term is defined in Section 53-1-102.

(13) "Owner" means an individual who is listed with the Division of Corporations and Commercial Code as a majority stockholder of a company, a general partner of a partnership, or the proprietor of a sole proprietorship.

(14) "Peace officer" means a person who:

## SB0043S07 compared with SB0043S06

(a) is a certified peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications; and

(b) derives total or special law enforcement powers from, and is an employee of, the federal government, the state, or a political subdivision, agency, department, branch, or service of either, of a municipality, or a unit of local government.

(15) "Regular basis" means at least 20 hours per month.

(16) "Responsible management personnel" means an individual who is responsible for managing an applicant's operations.

~~[(16)]~~ (17) (a) "Security officer" means an individual who is licensed as an armed or unarmed private security officer under this chapter and who:

(i) is employed by a contract security company securing, guarding, or otherwise protecting tangible personal property, real property, or the life and well being of human or animal life against:

(A) trespass or other unlawful intrusion or entry;

(B) larceny;

(C) vandalism or other abuse;

(D) arson or other criminal activity; or

(E) personal injury caused by another person or as a result of an act or omission by another person;

(ii) is controlling, regulating, or directing the flow of movements of an individual or vehicle; or

(iii) providing street patrol service.

(b) "Security officer" does not include an individual whose duties include taking admission tickets, checking credentials, ushering, or checking bags, purses, backpacks, or other materials of individuals who are entering a sports venue, concert venue, theatrical venue, convention center, fairgrounds, public assembly facility, or mass gathering location if:

(i) the individual carries out these duties without the use of specialized equipment;

(ii) the authority of the individual is limited to denying entry or passage of another individual into or within the facility; and

(iii) the individual is not authorized to use physical force in the performance of the individual's duties under this Subsection ~~[(16)]~~ (17)(b).

## **SB0043S07 compared with SB0043S06**

~~[(17)]~~ (18) "Security service provider" means a contract security company or an armored car company licensed under this chapter.

~~[(18)]~~ (19) "Security system" means equipment, a device, or an instrument installed for:

(a) detecting and signaling entry or intrusion by an individual into or onto, or exit from the premises protected by the system; or

(b) signaling the commission of criminal activity at the election of an individual having control of the features of the security system.

~~[(19)]~~ (20) "Specialized resource, motor vehicle, or equipment" means an item of tangible personal property specifically designed for use in law enforcement or in providing security or guard services, or that is specially equipped with a device or feature designed for use in providing law enforcement, security, or guard services, but does not include:

(a) standardized clothing, whether or not bearing a company name or logo, if the clothing does not bear the words "security" or "guard"; or

(b) an item of tangible personal property, other than a firearm or nonlethal weapon, that may be used without modification in providing security or guard services.

~~[(20)]~~ (21) "Street patrol service" means a contract security company that provides patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the company's duties and responsibilities.

~~[(21)]~~ (22) "Unarmed private security officer" means an individual:

(a) employed by a contract security company;

(b) whose primary duty is guarding personal or real property or providing protection or security to the life and well being of humans or animals;

(c) who does not wear, carry, possess, or have immediate access to a firearm in the performance of the individual's duties; and

(d) who wears clothing of distinctive design or fashion bearing a symbol, badge, emblem, insignia, or other device that identifies the individual as a security officer.

~~[(22)]~~ (23) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-63-501.

~~[(23)]~~ (24) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-63-502 and as may be further defined by rule.

## SB0043S07 compared with SB0043S06

Section 94. 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) shall meet with the division and the board and demonstrate that the applicant and the qualifying agent meet the requirements of this section;

(ii) is a resident of the state and is [~~a corporate officer~~] responsible management personnel or an owner of the applicant;

(iii) exercises material day-to-day authority in the conduct of the applicant's business by making substantive technical and administrative decisions and whose primary employment is with the applicant;

(iv) is not concurrently acting as a qualifying agent or employee of another armored car company or contract security company and is not engaged in any other employment on a regular basis;

(v) is not involved in any activity that would conflict with the qualifying agent's duties and responsibilities under this chapter to ensure that the qualifying agent's and the applicant's performance under this chapter does not jeopardize the health or safety of the general public;

(vi) is not an employee of a government agency;

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

(viii) (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~~

## SB0043S07 compared with SB0043S06

~~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 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;

## **SB0043S07 compared with SB0043S06**

- (j) file and maintain with the division evidence of:
  - (i) comprehensive general liability insurance in a form and in amounts established by 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);
  - (e) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;
  - (f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;
  - (g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board, which shall include a minimum of eight hours of classroom or online curriculum;
  - (h) successfully complete firearms training requirements established by rule by the



## SB0043S07 compared with SB0043S06

division in collaboration with the board, which shall include a minimum of 12 hours of training;

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

(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, which shall include a minimum of eight hours of classroom or online curriculum;

(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

## **SB0043S07 compared with SB0043S06**

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);

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

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

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

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

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

(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 who is applying for licensure or licensure renewal under this chapter.

(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

## SB0043S07 compared with SB0043S06

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.

(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 or licensure renewal under this chapter is qualified for licensure.

Section 95. Section **58-67-503** is amended to read:

**58-67-503. Penalties and administrative actions for unlawful and unprofessional conduct.**

(1) Any person who violates the unlawful conduct provisions of Section 58-67-501 or Section 58-1-501 is guilty of a third degree felony.

(2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:

- (i) assessing administrative penalties; or
- (ii) taking other appropriate administrative action.

(b) A monetary administrative penalty imposed under this section shall be deposited [in] into the Physician Education Fund created in Section 58-67a-1.

(3) If a licensee has been convicted of unlawful conduct, described in Section 58-67-501, before an administrative proceeding regarding the same conduct, the division may not assess an additional administrative fine under this chapter for the same conduct.

(4) (a) If the division concludes that an individual has violated provisions of Section 58-67-501, Section 58-67-502, Chapter 1, Division of [Occupational and] Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

## **SB0043S07 compared with SB0043S06**

(i) issue a citation to the individual;  
(ii) attempt to negotiate a stipulated settlement; or  
(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or

(ii) order to cease and desist from the behavior that constitutes a violation of the provisions described in Subsection (4)(a).

(c) An individual's license may not be suspended or revoked through a citation.

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

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

(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and

(iii) be served in accordance with the Utah Rules of Civil Procedure.

(e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

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

## SB0043S07 compared with SB0043S06

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

(h) No citation may be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

(5) (a) The director may collect a penalty imposed under this section that is not paid by:

(i) 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 a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 96. Section **58-68-503** is amended to read:

**58-68-503. Penalties and administrative actions for unlawful and unprofessional conduct.**

(1) Any person who violates the unlawful conduct provisions of Section 58-68-501 or Section 58-1-501 is guilty of a third degree felony.

(2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:

(i) assessing administrative penalties; or

(ii) taking any other appropriate administrative action.

(b) A monetary administrative penalty imposed under this section shall be deposited [in] into the Physician Education Fund described in Section 58-67a-1.

(3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501, before an administrative proceeding regarding the same conduct, the licensee may not be assessed an administrative fine under this chapter for the same conduct.

(4) (a) If the division concludes that an individual has violated the provisions of Section 58-68-501, Section 58-68-502, Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's

## SB0043S07 compared with SB0043S06

designee shall:

- (i) issue a citation to the individual;
- (ii) attempt to negotiate a stipulated settlement; or
- (iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

- (i) assess a fine of up to \$10,000 per single violation or \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or
- (ii) order to cease and desist from the behavior that constitutes a violation of provisions described in Subsection (4)(a).

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-1-401 may not be assessed through a citation.

(d) Each citation issued under this section shall:

- (i) be in writing;
- (ii) clearly describe or explain:

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

(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and

(iii) be served in accordance with the requirements of the Utah Rules of Civil Procedure.

(e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

## **SB0043S07 compared with SB0043S06**

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

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

(h) No citation may be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

(5) (a) The director may collect a penalty imposed under this section that is not paid by:

(i) 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 a penalty.

(c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Section 97. Section **58-71-402** is amended to read:

### **58-71-402. Authority to assess penalty.**

(1) After proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of ~~Occupational and~~ Professional Licensing Act, the division may impose administrative penalties of up to \$10,000 for acts of unprofessional conduct or unlawful conduct under this chapter.

(2) Assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

Section 98. Section **58-73-302** is amended to read:

### **58-73-302. Qualifications for licensure.**

(1) Each applicant for licensure as a chiropractic physician, other than those applying for a license based on licensure as a chiropractor or chiropractic physician in another jurisdiction, 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) demonstrate satisfactory completion of at least two years of general study in a

## SB0043S07 compared with SB0043S06

college or university;

(d) demonstrate having earned a degree of doctor of chiropractic from a chiropractic college or university that at the time the degree was conferred was accredited by the Council on Chiropractic Education, Inc., or an equivalent chiropractic accrediting body recognized by the United States Department of Education and by the division rule made in collaboration with the board;

(e) demonstrate successful completion of:

(i) the National Chiropractic Boards:

(A) Parts I and II;

(B) Written Clinical Competency Examination; and

(C) [~~Physical Therapy~~] Physiotherapy;

(ii) the Utah Chiropractic Law and Rules Examination; and

(iii) a practical examination approved by the division in collaboration with the board;

and

(f) meet with the board, if requested, for the purpose of reviewing the applicant's qualifications for licensure.

(2) Each applicant for licensure as a chiropractic physician based on licensure as a chiropractor or chiropractic physician in another jurisdiction shall:

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

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

(c) demonstrate having obtained licensure as a chiropractor or chiropractic physician in another state under education requirements which were equivalent to the education requirements in this state to obtain a chiropractor or chiropractic physician license at the time the applicant obtained the license in the other state;

(d) demonstrate successful completion of:

(i) the Utah Chiropractic Law and Rules Examination; and

(ii) the Special Purposes Examination for Chiropractic (SPEC) of the National Board of Chiropractic Examiners;

(e) have been actively engaged in the practice of chiropractic for not less than two years immediately preceding application for licensure in this state; and

(f) meet with the board, if requested, for the purpose of reviewing the applicant's



## SB0043S07 compared with SB0043S06

qualifications for licensure.

Section 99. Section **58-73-501** is amended to read:

### **58-73-501. Unprofessional conduct.**

Unprofessional conduct is as defined in Section 58-1-501, as defined by division rule, and also includes:

(1) engaging in practice as a chiropractic physician after electing to place his license on inactive status, without having established with the board that he has initiated or completed continuing education necessary to reinstate active status of his license;

(2) failing to complete required continuing professional education;

(3) violating any of the scope of practice standards set forth in Section 58-73-601;

(4) failing to maintain patient records in sufficient detail to clearly substantiate a diagnosis, all treatment rendered to the patient in accordance with the recognized standard of chiropractic care, and fees charged for professional services;

(5) refusing to divulge to the division on demand the means, methods, device, or instrumentality used in the treatment of a disease, injury, ailment, or infirmity, unless that information is protected by the physician-patient privilege of Utah and the patient has not waived that privilege;

(6) refusing the division or [its] the division's employees access to his office, instruments, laboratory equipment, appliances, or supplies at reasonable times for purposes of inspection;

(7) fraudulently representing that curable disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement in connection with the practice of chiropractic;

(8) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity by a secret means, method, device, or instrumentality;

(9) willfully and intentionally making any false statement or entry in any chiropractic office records or other chiropractic records or reports;

(10) knowingly engaging in billing practices which are abusive and represent charges which are fraudulent or grossly excessive for services rendered;

(11) performing, procuring, or agreeing to procure or perform, or advising, aiding in or abetting, or offering or attempting to procure or aid or abet in the procuring of a criminal

## SB0043S07 compared with SB0043S06

abortion;

(12) willfully betraying or disclosing a professional confidence or violation of a privileged communication, except:

(a) as required by law; or

(b) to assist the division by fully and freely exchanging information concerning applicants or licensees with the licensing or disciplinary boards of other states or foreign countries, the Utah chiropractic associations, their component societies, or chiropractic societies of other states, countries, districts, territories, or foreign countries;

(13) directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually rendered or supervised, but this subsection does not preclude the legal relationships within lawful professional partnerships, corporations, or associations; ~~and~~

(14) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary of them to another physician when requested to do so by the subject patient or his designated representative[-];

(15) making a false entry in, or altering, a medical record with the intent to conceal:

(a) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(b) conduct described in Subsections (1) through (14) or Subsection 58-1-501(1);

(16) sharing professional fees with a person who is not licensed under this chapter; and

(17) paying a person for a patient referral.

Section 100. Section **58-83-102** is amended to read:

### **58-83-102. Definitions.**

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

(1) "Board" means the Online Prescribing, Dispensing, and Facilitation Licensing Board created in Section 58-83-201.

(2) "Branching questionnaire" means an adaptive and progressive assessment tool approved by the board.

(3) "Delivery of online pharmaceutical services" means the process in which a prescribing practitioner diagnoses a patient and prescribes one or more of the drugs authorized by Section 58-83-306, using:

## SB0043S07 compared with SB0043S06

(a) a branching questionnaire or other assessment tool approved by the division for the purpose of diagnosing and assessing a patient's health status;

(b) an Internet contract pharmacy to:

(i) dispense the prescribed drug; or

(ii) transfer the prescription to another pharmacy; and

(c) an Internet facilitator to facilitate the practices described in Subsections (3)(a) and

(b).

(4) "Division" means the [Utah] Division of [~~Occupational and~~] Professional Licensing.

(5) "Internet facilitator" means a licensed provider of a web-based system for electronic communication between and among an online prescriber, the online prescriber's patient, and the online contract pharmacy.

(6) "Online contract pharmacy" means a pharmacy licensed and in good standing under Chapter 17b, Pharmacy Practice Act, as either a Class A Retail Pharmacy or a Class B Closed Door Pharmacy and licensed under this chapter to fulfill prescriptions issued by an online prescriber through a specific Internet facilitator.

(7) "Online prescriber" means a person:

(a) licensed under another chapter of this title;

(b) whose license under another chapter of this title includes assessing, diagnosing, and prescribing authority for humans; and

(c) who has obtained a license under this chapter to engage in online prescribing.

(8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-83-501.

(9) "Unprofessional conduct" is as defined in Sections 58-1-203 and 58-83-502, and as further defined by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 101. Section **58-83-302** is amended to read:

### **58-83-302. Qualifications for licensure.**

(1) Each applicant for licensure as an online prescriber under this chapter 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) be of good moral character;]~~

## SB0043S07 compared with SB0043S06

~~(d)~~ (c) document that the applicant holds a Utah license that is active and in good standing and authorizes the licensee to engage in the assessment, diagnosis, and treatment of human ailments and the prescription of medications;

~~(e)~~ (d) document that any other professional license the applicant possesses from other jurisdictions is in good standing;

~~(f)~~ (e) (i) submit to the division an outline of the applicant's proposed online assessment, diagnosis, and prescribing tool, such as a branching questionnaire; and

(ii) demonstrate the proposed online assessment, diagnosis, and prescribing tool to the board and establish to the board's satisfaction that the utilization of that assessment tool to facilitate the prescription of the drugs approved for online prescribing under Section 58-83-305 does not compromise the public's health, safety, or welfare;

~~(g)~~ (f) submit policies and procedures that address patient confidentiality, including measures that will be taken to ensure that the age and other identifying information of the person completing the online branching questionnaire are accurate;

~~(h)~~ (g) describe the mechanism by which the online prescriber and patient will communicate with one another, including electronic and telephonic communication;

~~(i)~~ (h) describe how the online prescriber/patient relationship will be established and maintained;

~~(j)~~ (i) submit the name, address, and contact person of the Internet facilitator with whom the online prescriber has contracted to provide services that the online prescriber will use to engage in online assessment, diagnosis, and prescribing; and

~~(k)~~ (j) submit documentation satisfactory to the board regarding public health, safety, and welfare demonstrating:

(i) how the online prescriber will comply with the requirements of Section 58-83-305;

(ii) the contractual services arrangement between the online prescriber and:

(A) the Internet facilitator; and

(B) the online contract pharmacy; and

(iii) how the online prescriber will allow and facilitate the division's ability to conduct audits in accordance with Section 58-83-308.

(2) An online prescriber may not use the services of an Internet facilitator or online contract pharmacy whose license is not active and in good standing.

## **SB0043S07 compared with SB0043S06**

(3) Each applicant for licensure as an online contract pharmacy under this chapter shall:

(a) be licensed in good standing in Utah as a Class A Retail Pharmacy or a Class B Closed Door Pharmacy;

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

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

(d) submit any contract between the applicant and the Internet facilitator with which the applicant is or will be affiliated;

(e) submit proof of liability insurance acceptable to the division that expressly covers all activities the online contract pharmacy will engage in under this chapter, which coverage shall be in a minimum amount of \$1,000,000 per occurrence with a policy limit of not less than \$3,000,000;

(f) submit a signed affidavit to the division attesting that the online contract pharmacy will not dispense a drug that is prescribed by an online prescriber engaged in the delivery of online pharmaceutical services under the provisions of this chapter unless:

(i) the drug is specifically approved by the division under Section 58-83-306; and

(ii) both the prescribing and the dispensing of the drug were facilitated by the Internet facilitator with whom the Internet contract pharmacy is associated under Subsection ~~[58-83-302]~~(3)(d);

(g) document that any other professional license the applicant possesses from other jurisdictions is active and in good standing; and

(h) demonstrate to the division that the applicant has satisfied any background check required by Section 58-17b-307, and each owner, officer, or manager of the applicant online contract pharmacy has not engaged in any act, practice, or omission, which when considered with the duties and responsibilities of a licensee under this chapter indicates there is cause to believe that issuing a license under this chapter is inconsistent with the public's health, safety, or welfare.

(4) Each applicant for licensure as an Internet facilitator under this chapter shall:

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

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

(c) submit any contract between the applicant and the following with which the

## SB0043S07 compared with SB0043S06

applicant will be affiliated:

- (i) each online prescriber; and
- (ii) the single online contract pharmacy;
- (d) submit written policies and procedures satisfactory to the division that:
  - (i) address patient privacy, including compliance with 45 C.F.R. Parts 160, 162, and 164, Health Insurance Portability and Accountability Act of 1996;
  - (ii) ensure compliance with all applicable laws by health care personnel and the online prescriber who will process patient communications;
  - (iii) list the hours of operation;
  - (iv) describe the types of services that will be permitted electronically;
  - (v) describe the required patient information to be included in the communication, such as patient name, identification number, and type of transaction;
  - (vi) establish procedures for archiving and retrieving information; and
  - (vii) establish quality oversight mechanisms;
- (e) submit written documentation of the applicant's security measures to ensure the confidentiality and integrity of any user-identifiable medical information;
  - (f) submit a description of the mechanism for:
    - (i) patients to access, supplement, and amend patient-provided personal health information;
    - (ii) back-up regarding the Internet facilitator electronic interface;
    - (iii) the quality of information and services provided via the interface; and
    - (iv) patients to register complaints regarding the Internet facilitator, the online prescriber, or the online contract pharmacy;
  - (g) submit a copy of the Internet facilitator's website;
  - (h) sign an affidavit attesting that:
    - (i) the applicant will not access any medical records or information contained in the medical record except as necessary to administer the website and the branching questionnaire; and
    - (ii) the applicant and its principals, and any entities affiliated with them, will only use the services of a single online contract pharmacy named on the license approved by the division; and

## **SB0043S07 compared with SB0043S06**

(i) submit any other information required by the division.

Section 102. Section **58-83-401** is amended to read:

### **58-83-401. Grounds for denial of license -- Disciplinary proceedings --**

#### **Termination of authority to prescribe -- Immediate and significant danger.**

(1) Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public reprimand to a licensee, and for issuing a cease and desist order:

(a) shall be in accordance with Section 58-1-401; and

(b) includes:

(i) prescribing, dispensing, or facilitating the prescribing or dispensing of a drug not approved by the board under Section 58-83-306; or

(ii) any other violation of this chapter.

(2) The termination or expiration of a license under this chapter for any reason does not limit the division's authority to start or continue any investigation or adjudicative proceeding.

(3) (a) Because of the working business relationship between and among the online prescriber, the Internet facilitator, and the online contract pharmacy, each entity's ability to comply with this chapter may depend in some respects on the actions of the others.

(b) It is possible that a particular action or inaction by the online prescriber, the Internet facilitator, or the online contract pharmacy could have the effect of causing the other licensed entities to be out of compliance with this chapter, and each entity may, therefore, be held accountable for any related party's non-compliance, if the party knew or reasonably should have known of the other person's non-compliance.

(4) (a) An online prescriber may lose the practitioner's professional license to prescribe any drug under this title if the online prescriber knew or reasonably should have known that the provisions of this chapter were violated by the online prescriber, the Internet facilitator, or the online contract pharmacy.

(b) It is not a defense to an alleged violation under this chapter that the alleged violation was a result of an action or inaction not by the charged party but by the related online prescriber, the online contract pharmacy, or the Internet facilitator.

(5) The following actions may result in an immediate suspension of the online

## SB0043S07 compared with SB0043S06

prescriber's license, the online contract pharmacy's license, or the Internet facilitator's license, and each is considered an immediate and significant danger to the public health, safety, or welfare requiring immediate action by the division pursuant to Section 63G-4-502 to terminate the delivery of online pharmaceutical services by the licensee:

- (a) online prescribing, dispensing, or facilitation with respect to:
  - (i) a person [~~under the age of~~] who is younger than 18 years old;
  - (ii) a legend drug not authorized by the division in accordance with Section 58-83-306;

and

- (iii) any controlled substance;
- (b) violating this chapter after having been given reasonable opportunity to cure the

violation;

(c) using the name or official seal of the state, the [~~Utah Department of Commerce~~] department, or the [~~Utah Division of Occupational and Professional Licensing~~] division, or their boards, in an unauthorized manner; or

(d) failing to respond to a request from the division within the time frame requested for:

- (i) an audit of the website; or
- (ii) records of the online prescriber, the Internet facilitator, or the online contract

pharmacy.

Section 103. Section **58-83-502** is amended to read:

### **58-83-502. Unprofessional conduct.**

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may be further defined by administrative rule:

(1) except as provided in Section 58-83-306, online prescribing, dispensing, or facilitation with respect to a person [~~under the age of~~] who is younger than 18 years old;

(2) using the name or official seal of the state, the [~~Utah Department of Commerce~~] division, or the [~~Utah Division of Occupational and Professional Licensing~~] division, or their boards, in an unauthorized manner;

(3) failing to respond promptly to a request by the division for information including:

- (a) an audit of the website; or
- (b) records of the online prescriber, the Internet facilitator, or the online contract



## SB0043S07 compared with SB0043S06

pharmacy;

(4) using an online prescriber, online contract pharmacy, or Internet facilitator without approval of the division;

(5) failing to inform a patient of the patient's freedom of choice in selecting who will dispense a prescription in accordance with Subsection 58-83-305(1)(n);

(6) failing to keep the division informed of the name and contact information of the Internet facilitator or online contract pharmacy;

(7) violating the dispensing and labeling requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy; or

(8) falsely making an entry in, or altering, a medical record with the intent to conceal:

(a) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(b) conduct described in Subsections (1) through (7) or Subsection 58-1-501(1).

Section 104. Section **58-87-103** is amended to read:

### **58-87-103. Administration -- Rulemaking -- Service of process.**

(1) (a) This chapter shall be administered by the division and is subject to the requirements of Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, so long as the requirements of Chapter 1, Division of [~~Occupational and~~] Professional Licensing Act, are not inconsistent with the requirements of this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules necessary to implement this chapter.

(2) By acting as an athlete agent in this state, a nonresident individual appoints the director of the division as the individual's agent for service of process in any civil action in this state related to the individual acting as an athlete agent in this state.

Section 105. Section **59-10-1111** is amended to read:

### **59-10-1111. Refundable tax credit for psychiatrists, psychiatric mental health nurse practitioners, and volunteer retired psychiatrists.**

(1) As used in this section:

(a) "Psychiatric mental health nurse practitioner" means the same as that term is defined in Section 58-1-111.

(b) "Psychiatrist" means the same as that term is defined in Section 58-1-111.

## SB0043S07 compared with SB0043S06

(c) "Tax credit certificate" means a certificate issued by the Division of [~~Occupational and~~] Professional Licensing under Section 58-1-111 certifying that the claimant is entitled to a tax credit under this section.

(d) "Volunteer retired psychiatrist" means the same as that term is defined in Section 58-1-111.

(2) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner and who submits a tax credit certificate issued by the Division of [~~Occupational and~~] Professional Licensing under Subsection 58-1-111(3), may claim a refundable tax credit:

- (a) as provided in this section; and
- (b) in the amount of \$10,000.

(3) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner and who submits a tax credit certificate under Subsection 58-1-111(4) may claim a refundable tax credit:

- (a) as provided in this section; and
- (b) in the amount of \$10,000.

(4) A claimant who is a volunteer retired psychiatrist and who submits a tax credit certificate under Subsection 58-1-111(5) may claim a refundable tax credit:

- (a) as provided in this section; and
- (b) in the amount of \$10,000.

(5) A claimant may claim a tax credit under Subsections (2) through (4) for no more than 10 taxable years for each tax credit.

(6) (a) In accordance with any rules prescribed by the commission under Subsection (6)(b), the commission shall make a refund to a claimant who claims a tax credit under this section if the amount of the tax credit exceeds the claimant's tax liability for the taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a claimant as required by Subsection (6)(a).

Section 106. Section **62A-3-202** is amended to read:

### **62A-3-202. Definitions.**

As used in this part:

- (1) "Assisted living facility" means the same as that term is defined in Section 26-21-2.

## **SB0043S07 compared with SB0043S06**

(2) "Auxiliary aids and services" means items, equipment, or services that assist in effective communication between an individual who has a mental, hearing, vision, or speech disability and another individual.

(3) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.

(4) "Intermediate care facility" means the same as that term is defined in Section ~~[58-15-2]~~ 58-15-101.

(5) (a) "Long-term care facility" means:

(i) a skilled nursing facility;

(ii) except as provided in Subsection (5)(b), an intermediate care facility;

(iii) a nursing home;

(iv) a small health care facility;

(v) a small health care facility type N; or

(vi) an assisted living facility.

(b) "Long-term care facility" does not mean an intermediate care facility for people with an intellectual disability, as defined in Section ~~[58-15-2]~~ 58-15-101.

(6) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.

(7) "Ombudsman program" means the Long-Term Care Ombudsman Program.

(8) "Resident" means an individual who resides in a long-term care facility.

(9) "Skilled nursing facility" means the same as that term is defined in Section ~~[58-15-2]~~ 58-15-101.

(10) "Small health care facility" means the same as that term is defined in Section 26-21-2.

(11) "Small health care facility type N" means a residence in which a licensed nurse resides and provides protected living arrangements, nursing care, and other services on a daily basis for two to three individuals who are also residing in the residence and are unrelated to the licensee.

## **SB0043S07 compared with SB0043S06**

Section 107. Section **62A-3-305** is amended to read:

### **62A-3-305. Reporting requirements -- Investigation -- Exceptions -- Immunity -- Penalties -- Nonmedical healing.**

(1) Except as provided in Subsection (4), if an individual has reason to believe that a vulnerable adult is, or has been, the subject of abuse, neglect, or exploitation, the individual shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services or to the nearest peace officer or law enforcement agency.

(2) (a) If a peace officer or a law enforcement agency receives a report under Subsection (1), the peace officer or the law enforcement agency shall immediately notify Adult Protective Services.

(b) Adult Protective Services and the peace officer or the law enforcement agency shall coordinate, as appropriate, efforts to investigate the report under Subsection (1) and to provide protection to the vulnerable adult.

(3) When a report under Subsection (1), or a subsequent investigation by Adult Protective Services, indicates that a criminal offense may have occurred against a vulnerable adult:

(a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and

(b) the law enforcement agency shall initiate an investigation in cooperation with Adult Protective Services.

(4) Subject to Subsection (5), the reporting requirement described in Subsection (1) does not apply to:

(a) a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:

(i) the perpetrator made the confession directly to the member of the clergy; and

(ii) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession; or

(b) an attorney, or an individual employed by the attorney, if knowledge of the suspected abuse, neglect, or exploitation of a vulnerable adult arises from the representation of a client, unless the attorney is permitted to reveal the suspected abuse, neglect, or exploitation

## **SB0043S07 compared with SB0043S06**

of the vulnerable adult to prevent reasonably certain death or substantial bodily harm in accordance with Utah Rules of Professional Conduct, Rule 1.6.

(5) (a) When a member of the clergy receives information about abuse, neglect, or exploitation of a vulnerable adult from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse or neglect from the confession of the perpetrator.

(b) Exemption of the reporting requirement for an individual described in Subsection (4) does not exempt the individual from any other efforts required by law to prevent further abuse, neglect, or exploitation of a vulnerable adult by the perpetrator.

(6) (a) As used in this Subsection (6), "physician" means an individual licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(b) The physician-patient privilege does not:

(i) excuse a physician from reporting suspected abuse, neglect, or exploitation of a vulnerable adult under Subsection (1); or

(ii) constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any judicial or administrative proceeding resulting from a report under Subsection (1).

(7) (a) An individual who in good faith makes a report under Subsection (1), or who otherwise notifies Adult Protective Services or a peace officer or law enforcement agency, is immune from civil and criminal liability in connection with the report or notification.

(b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency, under Subsection (1), is subject to a private right of action and liability for the abuse, neglect, or exploitation of a vulnerable adult that is committed by the individual who was not reported to Adult Protective Services or to the nearest peace officer or law enforcement agency.

(c) This Subsection (7) does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.

## **SB0043S07 compared with SB0043S06**

(8) If Adult Protective Services has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, or exploitation of a vulnerable adult in accordance with this section, Adult Protective Services shall file a complaint with:

(a) the Division of [~~Occupational and~~] Professional Licensing if the individual is a health care provider, as defined in Section 62A-4a-404, or a mental health therapist, as defined in Section 58-60-102;

(b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; and

(c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102.

(9) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency under Subsection (1).

(b) If an individual is convicted under Subsection (9)(a), the court may order the individual, in addition to any other sentence the court imposes, to:

(i) complete community service hours; or

(ii) complete a program on preventing abuse, neglect, and exploitation of vulnerable adults.

(c) In determining whether it would be appropriate to charge an individual with a violation of Subsection (9)(a), the prosecuting attorney shall take into account whether a reasonable individual would not have reported suspected abuse, neglect, or exploitation of a vulnerable adult because reporting would have placed the individual in immediate danger of death or serious bodily injury.

(d) Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (9)(a) as the basis for charging the individual with another offense.

(e) A prosecution for failure to report under Subsection (9)(a) shall be commenced within two years after the day on which the individual had knowledge of the suspected abuse, neglect, or exploitation and willfully failed to report.

(10) Under circumstances not amounting to a violation of Section 76-8-508, an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or

## SB0043S07 compared with SB0043S06

attempts to intimidate a vulnerable adult who is the subject of a report under Subsection (1), the individual who made the report under Subsection (1), a witness, or any other person cooperating with an investigation conducted in accordance with this chapter.

(11) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Section 108. Section **62A-3-311.1** is amended to read:

### **62A-3-311.1. Statewide database -- Restricted use and access.**

(1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.

(2) The database shall include:

(a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;

(b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:

(i) supported;

(ii) inconclusive;

(iii) without merit; or

(iv) for reports for which the finding is made before May 5, 2008:

(A) substantiated; or

(B) unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.

(3) Information obtained from the database may be used only:

(a) for statistical summaries compiled by the department that do not include names or other identifying data;

(b) where identification of an individual as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:

(i) the department;

(ii) the Division of [~~Occupational and~~] Professional Licensing;

(iii) the Bureau of Licensing, within the Department of Health;

## SB0043S07 compared with SB0043S06

(iv) the Bureau of Emergency Medical Services and Preparedness, within the Department of Health, or a designee of the Bureau of Emergency Medical Services and Preparedness;

(v) any government agency specifically authorized by statute to access or use the information in the database; or

(vi) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or

(c) as otherwise specifically provided by law.

Section 109. Section **62A-3-312** is amended to read:

### **62A-3-312. Access to information in database.**

The database and the adult protection case file:

(1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, the Division of [~~Occupational and~~] Professional Licensing, and county or district attorney's offices;

(2) shall be released as required under Subsection 63G-2-202(4)(c); and

(3) may be made available, at the discretion of the division, to:

(a) subjects of a report as follows:

(i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and

(ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and

(b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

(i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;

(ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;

(iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;

(iv) a licensing authority for a facility, program, or person providing care to a victim



## SB0043S07 compared with SB0043S06

named in a report; and

(v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:

(A) the Office of Public Guardian, created in Section 62A-14-103; and

(B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Section 110. Section **62A-4a-411** is amended to read:

### **62A-4a-411. Failure to report -- Threats and intimidation -- Penalties.**

(1) If the division has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency in accordance with this part, the division shall file a complaint with:

(a) the Division of [~~Occupational and~~] Professional Licensing if the individual is a health care provider, as defined in Section 62A-4a-404, or a mental health therapist, as defined in Section 58-60-102;

(b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; and

(c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102.

(2) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report the suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency in accordance with this part.

(b) If an individual is convicted under Subsection (2)(a), the court may order the individual, in addition to any other sentence the court imposes, to:

(i) complete community service hours; or

(ii) complete a program on preventing abuse and neglect of children.

(c) In determining whether it would be appropriate to charge an individual with a violation of Subsection (2)(a), the prosecuting attorney shall take into account whether a reasonable individual would not have reported suspected abuse or neglect of a child because reporting would have placed the individual in immediate danger of death or serious bodily injury.

(d) Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (2)(a) as the basis for charging the individual with

## SB0043S07 compared with SB0043S06

another offense.

(e) A prosecution for failure to report under Subsection (2)(a) shall be commenced within two years after the day on which the individual had knowledge of the suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency and willfully failed to report.

(3) Under circumstances not amounting to a violation of Section 76-8-508, an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a child who is the subject of a report under this part, the individual who made the report, a witness, or any other person cooperating with an investigation conducted in accordance with this chapter.

Section 111. Section **62A-4a-603** is amended to read:

### **62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.**

(1) The Office of Licensing within the department or any interested person may commence an action in district court to enjoin any person, agency, firm, corporation, or association violating Section 62A-4a-602.

(2) The Office of Licensing shall:

(a) solicit information from the public relating to violations of Section 62A-4a-602;  
and

(b) upon identifying a violation of Section 62A-4a-602:

(i) send a written notice to the person who violated Section 62A-4a-602 that describes the alleged violation; and

(ii) notify the following persons of the alleged violation:

(A) the local county attorney; and

(B) the Division of [~~Occupational and~~] Professional Licensing.

(3) (a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 62A-4a-602 after being informed of an alleged violation.

(b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 62A-4a-602, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.

(4) (a) In addition to the remedies provided in Subsections (1) and (3), any person, agency, firm, corporation, or association found to be in violation of Section 62A-4a-602 shall

## **SB0043S07 compared with SB0043S06**

forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Each act in violation of Section 62A-4a-602, including each placement or attempted placement of a child, is a separate violation.

(5) (a) All amounts recovered as penalties under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.

(b) If two or more governmental entities are involved in the prosecution, the penalty amounts recovered shall be apportioned by the court among the entities, according to their involvement.

(6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Section 112. Section **62A-15-103** is amended to read:

### **62A-15-103. Division -- Creation -- Responsibilities.**

(1) (a) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director.

(b) The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) except as provided in Section 62A-15-103.5, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public

## **SB0043S07 compared with SB0043S06**

and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the department under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(vi) promote integrated programs that address an individual's substance abuse, mental health, physical health, and criminal risk factors;

(vii) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with substance use disorder and mental illness that addresses criminal risk factors;

(viii) evaluate the effectiveness of programs described in this Subsection (2);

(ix) consider the impact of the programs described in this Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(x) promote or establish programs for education and certification of instructors to educate individuals convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of the state hospital's budget, administrative policy, and coordination of services with local service plans;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that an individual receiving services through a local mental health authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

## **SB0043S07 compared with SB0043S06**

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

(C) in counties where they exist, a private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

(B) a statewide comprehensive continuum of mental health services;

(C) services result in improved overall health and functioning;

## **SB0043S07 compared with SB0043S06**

(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;

(E) compliance, where appropriate, with the certification requirements in Subsection (2)(j); and

(F) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with the local mental health authority's provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with division rules and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to the division on or before May 15 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority and each local substance abuse authority's contract provider, and each local mental health authority and each local mental health authority's contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use

## SB0043S07 compared with SB0043S06

disorder and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate;

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,

Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

(h) (i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:

(A) a substance use disorder;

(B) a mental health disorder; or

(C) a substance use disorder and a mental health disorder;

(ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish training and certification requirements for a peer support specialist;

(B) specify the types of services a peer support specialist is qualified to provide;

(C) specify the type of supervision under which a peer support specialist is required to operate; and

(D) specify continuing education and other requirements for maintaining or renewing certification as a peer support specialist; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, that:

(A) establish the requirements for a person to be certified to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist; and

(B) specify how the division shall provide oversight of a person certified to train and certify a peer support specialist;

(i) except as provided in Section 62A-15-103.5, establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment to an individual who is incarcerated or who is required to participate in treatment by a court or by the Board of Pardons and Parole, including:

(i) collaboration with the Department of Corrections and the Utah Substance Use and

## **SB0043S07 compared with SB0043S06**

Mental Health Advisory Council to develop and coordinate the standards, including standards for county and state programs serving individuals convicted of class A and class B misdemeanors;

(ii) determining that the standards ensure available treatment, including the most current practices and procedures demonstrated by recognized scientific research to reduce recidivism, including focus on the individual's criminal risk factors; and

(iii) requiring that all public and private treatment programs meet the standards established under this Subsection (2)(i) in order to receive public funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice for the costs of providing screening, assessment, prevention, treatment, and recovery support;

(j) except as provided in Section 62A-15-103.5, establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements and procedures for the certification of licensed public and private providers, including individuals licensed by the Division of [~~Occupational and~~] Professional Licensing, programs licensed by the department, and health care facilities licensed by the Department of Health, who provide, as part of their practice, substance use disorder and mental health treatment to an individual involved in the criminal justice system, including:

(i) collaboration with the Department of Corrections, the Utah Substance Use and Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement the certification process;

(ii) basing the certification process on the standards developed under Subsection (2)(i) for the treatment of an individual involved in the criminal justice system; and

(iii) the requirement that a public or private provider of treatment to an individual involved in the criminal justice system shall obtain certification on or before July 1, 2016, and shall renew the certification every two years, in order to qualify for funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice on or after July 1, 2016;

(k) collaborate with the Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed to reduce recidivism;

(ii) county jail and county behavioral health early-assessment resources needed for an



## **SB0043S07 compared with SB0043S06**

offender convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;

(l) (i) establish performance goals and outcome measurements for all treatment programs for which minimum standards are established under Subsection (2)(i), including recidivism data and data regarding cost savings associated with recidivism reduction and the reduction in the number of inmates, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections; and

(ii) collect data to track and determine whether the goals and measurements are being attained and make this information available to the public;

(m) in the division's discretion, use the data to make decisions regarding the use of funds allocated to the division, the Administrative Office of the Courts, and the Department of Corrections to provide treatment for which standards are established under Subsection (2)(i);

(n) annually, on or before August 31, submit the data collected under Subsection (2)(k) to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings based on the data and provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees; and

(o) consult and coordinate with the Department of Health and the Division of Child and Family Services to develop and manage the operation of a program designed to reduce substance abuse during pregnancy and by parents of a newborn child that includes:

(i) providing education and resources to health care providers and individuals in the state regarding prevention of substance abuse during pregnancy;

(ii) providing training to health care providers in the state regarding screening of a pregnant woman or pregnant minor to identify a substance abuse disorder; and

(iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn child in need of substance abuse treatment services to a facility that has the capacity to provide the treatment services.

(3) In addition to the responsibilities described in Subsection (2), the division shall, within funds appropriated by the Legislature for this purpose, implement and manage the operation of a firearm safety and suicide prevention program, in consultation with the Bureau

## SB0043S07 compared with SB0043S06

of Criminal Identification created in Section 53-10-201, including:

(a) coordinating with the Department of Health, local mental health and substance abuse authorities, a nonprofit behavioral health advocacy group, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners, to:

(i) produce and periodically review and update a firearm safety brochure and other educational materials with information about the safe handling and use of firearms that includes:

(A) information on safe handling, storage, and use of firearms in a home environment;

(B) information about at-risk individuals and individuals who are legally prohibited from possessing firearms;

(C) information about suicide prevention awareness; and

(D) information about the availability of firearm safety packets;

(ii) procure cable-style gun locks for distribution under this section;

(iii) produce a firearm safety packet that includes the firearm safety brochure and the cable-style gun lock described in this Subsection (3); and

(iv) create a suicide prevention education course that:

(A) provides information for distribution regarding firearm safety education;

(B) incorporates current information on how to recognize suicidal behaviors and identify individuals who may be suicidal; and

(C) provides information regarding crisis intervention resources;

(b) distributing, free of charge, the firearm safety packet to the following persons, who shall make the firearm safety packet available free of charge:

(i) health care providers, including emergency rooms;

(ii) mobile crisis outreach teams;

(iii) mental health practitioners;

(iv) other public health suicide prevention organizations;

(v) entities that teach firearm safety courses;

(vi) school districts for use in the seminar, described in Section 53G-9-702, for parents of students in the school district; and

(vii) firearm dealers to be distributed in accordance with Section 76-10-526;

## **SB0043S07 compared with SB0043S06**

(c) creating and administering a rebate program that includes a rebate that offers between \$10 and \$200 off the purchase price of a firearm safe from a participating firearms dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah resident;

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that establish procedures for:

(i) producing and distributing the suicide prevention education course and the firearm safety brochures and packets;

(ii) procuring the cable-style gun locks for distribution; and

(iii) administering the rebate program; and

(e) reporting to the Health and Human Services Interim Committee regarding implementation and success of the firearm safety program and suicide prevention education course at or before the November meeting each year.

(4) (a) The division may refuse to contract with and may pursue legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(5) (a) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with the oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309.

(b) Nothing in this Subsection (5) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(6) In carrying out the division's duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able

## SB0043S07 compared with SB0043S06

to provide.

(7) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(8) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

- (a) use of public funds;
- (b) oversight of public funds; and
- (c) governance of substance use disorder and mental health programs and services.

(9) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(10) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

- (a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
- (b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

(11) The division shall employ a school-based mental health specialist to be housed at the State Board of Education who shall work with the State Board of Education to:

- (a) provide coordination between a local education agency and local mental health authority;
- (b) recommend evidence-based and evidence informed mental health screenings and intervention assessments for a local education agency; and
- (c) coordinate with the local community, including local departments of health, to enhance and expand mental health related resources for a local education agency.

Section 113. Section **63G-2-305** is amended to read:

### **63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

- (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret

## **SB0043S07 compared with SB0043S06**

has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(i) an invitation for bids;

(ii) a request for proposals;

(iii) a request for quotes;

(iv) a grant; or

(v) other similar document; or

## **SB0043S07 compared with SB0043S06**

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the

## **SB0043S07 compared with SB0043S06**

transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the

## **SB0043S07 compared with SB0043S06**

employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and



## **SB0043S07 compared with SB0043S06**

General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state

## **SB0043S07 compared with SB0043S06**

that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

## **SB0043S07 compared with SB0043S06**

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

## **SB0043S07 compared with SB0043S06**

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

## **SB0043S07 compared with SB0043S06**

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge including information disclosed under Subsection

## **SB0043S07 compared with SB0043S06**

78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

## **SB0043S07 compared with SB0043S06**

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(61) information provided to the Department of Health or the Division of ~~Occupational and~~ Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

(62) a record described in Section 63G-12-210;

(63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

(64) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

(65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection

## SB0043S07 compared with SB0043S06

76-2-408(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

(67) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(69) work papers as defined in Section 31A-2-204;

(70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(71) a record submitted to the Insurance Department in accordance with Section 31A-37-201;

(72) a record described in Section 31A-37-503;

(73) any record created by the Division of [~~Occupational and~~] Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(74) a record described in Section 72-16-306 that relates to the reporting of an injury



## SB0043S07 compared with SB0043S06

involving an amusement ride;

(75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

- (a) Title 10, Utah Municipal Code;
- (b) Title 17, Counties;
- (c) Title 17B, Limited Purpose Local Government Entities - Local Districts;
- (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- (e) Title 20A, Election Code;

(76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

(78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(79) a record submitted to the Insurance Department under Subsection 31A-48-103(1)(b);

(80) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;

(81) (a) an image taken of an individual during the process of booking the individual into jail, unless:

(i) the individual is convicted of a criminal offense based upon the conduct for which the individual was incarcerated at the time the image was taken;

(ii) a law enforcement agency releases or disseminates the image after determining that:

(A) the individual is a fugitive or an imminent threat to an individual or to public safety; and

(B) releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or

(iii) a judge orders the release or dissemination of the image based on a finding that the

## SB0043S07 compared with SB0043S06

release or dissemination is in furtherance of a legitimate law enforcement interest.

(82) a record:

(a) concerning an interstate claim to the use of waters in the Colorado River system;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system; and

(83) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (83) may not be used to restrict access to a record evidencing a final contract or approval decision.

Section 114. Section **63I-1-258** is amended to read:

### **63I-1-258. Repeal dates, Title 58.**

(1) Section 58-3a-201, which creates the Architects Licensing Board, is repealed July 1, 2026.

~~[(2) Section 58-11a-302.5 is repealed July 1, 2022.]~~

~~[(3) (2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2026.~~

~~[(4) (3) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2025.~~

~~[(5) (4) Title 58, Chapter 20b, Environmental Health Scientist Act, is repealed July 1, 2028.~~

~~[(6) (5) Subsection 58-37-6(7)(f)(iii) is repealed July 1, 2022, and the Office of Legislative Research and General Counsel is authorized to renumber the remaining subsections~~

## SB0043S07 compared with SB0043S06

accordingly.

~~[(7)]~~ (6) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, ~~[2023]~~ 2033.

~~[(8)]~~ (7) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is repealed July 1, 2029.

~~[(9)]~~ (8) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2025.

~~[(10)]~~ (9) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2023.

~~[(11)]~~ (10) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.

~~[(12)]~~ (11) Subsection 58-55-201(2), which creates the Alarm System and Security Licensing Advisory Board, is repealed July 1, 2027.

~~[(13)]~~ (12) Subsection 58-60-405(3), regarding certain educational qualifications for licensure and reporting, is repealed July 1, 2022.

~~[(14)]~~ (13) Title 58, Chapter 61, Part 7, Behavior Analyst Licensing Act, is repealed July 1, 2026.

~~[(15)]~~ (14) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2027.

~~[(16)]~~ (15) The following sections are repealed on July 1, 2022:

- (a) Section 58-5a-502;
- (b) Section 58-31b-502.5;
- (c) Section 58-67-502.5;
- (d) Section 58-68-502.5; and
- (e) Section 58-69-502.5.

Section 115. Section **63J-1-602.1** is amended to read:

### **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

Appropriations made from the following accounts or funds are nonlapsing:

- (1) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.
- (2) The Native American Repatriation Restricted Account created in Section 9-9-407.
- (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in

## **SB0043S07 compared with SB0043S06**

Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

(5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-106.

(6) Money received by the Utah Inland Port Authority, as provided in Section 11-58-105.

(7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

(8) The Clean Air Support Restricted Account created in Section 19-1-109.

(9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in Section 19-2a-106.

(10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in Section 19-5-126.

(11) The "Support for State-Owned Shooting Ranges Restricted Account" created in Section 23-14-13.5.

(12) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

(13) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

(14) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

(15) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

(16) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

(17) The Nurse Home Visiting Restricted Account created in Section 26-63-601.

(18) The Technology Development Restricted Account created in Section 31A-3-104.

(19) The Criminal Background Check Restricted Account created in Section 31A-3-105.

(20) The Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

## **SB0043S07 compared with SB0043S06**

- (21) The Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.
- (22) The Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.
- (23) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.
- (24) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.
- (25) The School Readiness Restricted Account created in Section 35A-15-203.
- (26) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.
- (27) The Oil and Gas Administrative Penalties Account created in Section 40-6-11.
- (28) The Oil and Gas Conservation Account created in Section 40-6-14.5.
- (29) The Division of Oil, Gas, and Mining Restricted account created in Section 40-6-23.
- (30) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.
- (31) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.
- (32) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.
- (33) The State Disaster Recovery Restricted Account to the Division of Emergency Management, as provided in Section 53-2a-603.
- (34) The Department of Public Safety Restricted Account to the Department of Public Safety, as provided in Section 53-3-106.
- (35) The Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.
- (36) The DNA Specimen Restricted Account created in Section 53-10-407.
- (37) The Canine Body Armor Restricted Account created in Section 53-16-201.
- (38) The Technical Colleges Capital Projects Fund created in Section 53B-2a-118.
- (39) The Higher Education Capital Projects Fund created in Section 53B-22-202.

## **SB0043S07 compared with SB0043S06**

(40) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

(41) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5, subject to Subsection 54-5-1.5(4)(d).

(42) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-3a-105.

(43) Certain fines collected by the Division of [~~Occupational and~~] Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

(44) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-22-104.

(45) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-55-106.

(46) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-56-3.5.

(47) Certain fines collected by the Division of [~~Occupational and~~] Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

(48) The Relative Value Study Restricted Account created in Section 59-9-105.

(49) The Cigarette Tax Restricted Account created in Section 59-14-204.

(50) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(51) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(52) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.

(53) The National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202.

(54) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

## **SB0043S07 compared with SB0043S06**

- (55) The Choose Life Adoption Support Restricted Account created in Section 62A-4a-608.
- (56) Funds collected by the Office of Administrative Rules for publishing, as provided in Section 63G-3-402.
- (57) The Immigration Act Restricted Account created in Section 63G-12-103.
- (58) Money received by the military installation development authority, as provided in Section 63H-1-504.
- (59) The Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.
- (60) The Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.
- (61) The Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.
- (62) The Utah Capital Investment Restricted Account created in Section 63N-6-204.
- (63) The Motion Picture Incentive Account created in Section 63N-8-103.
- (64) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.
- (65) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).
- (66) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.
- (67) The Transportation of Veterans to Memorials Support Restricted Account created in Section 71-14-102.
- (68) The Amusement Ride Safety Restricted Account, as provided in Section 72-16-204.
- (69) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.
- (70) The Water Resources Conservation and Development Fund, as provided in Section 73-23-2.
- (71) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).
- (72) Fees for certificate of admission created under Section 78A-9-102.

## **SB0043S07 compared with SB0043S06**

(73) Funds collected for adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(74) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

(75) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in Section 79-3-403.

(76) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, and Green River State Park, as provided under Section 79-4-403.

(77) Certain funds received by the Division of State Parks from the sale or disposal of buffalo, as provided under Section 79-4-1001.

(78) The Drinking While Pregnant Prevention Media and Education Campaign Restricted Account created in Section 32B-2-308.

Section 116. Section **63N-1b-301** is amended to read:

### **63N-1b-301. Talent, Education, and Industry Alignment Subcommittee -- Creation -- Membership -- Expenses -- Duties.**

(1) There is created a subcommittee of the commission called the Talent, Education, and Industry Alignment Subcommittee composed of the following members:

- (a) the state superintendent of public instruction or the superintendent's designee;
- (b) the commissioner of higher education or the commissioner of higher education's designee;
- (c) the chair of the State Board of Education or the chair's designee;
- (d) the executive director of the Department of Workforce Services or the executive director of the department's designee;
- (e) the executive director of the GO Utah office or the executive director's designee;
- (f) the director of the Division of [~~Occupational and~~] Professional Licensing or the director's designee;
- (g) the governor's education advisor or the advisor's designee;
- (h) one member of the Senate, appointed by the president of the Senate;
- (i) one member of the House of Representatives, appointed by the speaker of the House of Representatives;
- (j) the president of the Salt Lake Chamber or the president's designee;



## **SB0043S07 compared with SB0043S06**

- (k) three representatives of private industry chosen by the commission;
- (l) a representative of the technology industry chosen by the commission;
- (m) the lieutenant governor or the lieutenant governor's designee; and
- (n) any additional individuals appointed by the commission who represent:
  - (i) one or more individual educational institutions; or
  - (ii) education or industry professionals.

(2) The commission shall select a chair and vice chair from among the members of the talent subcommittee.

(3) The talent subcommittee shall meet at least quarterly.

(4) Attendance of a majority of the members of the talent subcommittee constitutes a quorum for the transaction of official talent subcommittee business.

(5) Formal action by the talent subcommittee requires the majority vote of a quorum.

(6) A member of the talent subcommittee:

- (a) may not receive compensation or benefits for the member's service; and
- (b) who is not a legislator may receive per diem and travel expenses in accordance

with:

- (i) Section 63A-3-106;
- (ii) Section 63A-3-107; and
- (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(7) The talent subcommittee shall:

(a) (i) review and develop metrics to measure the progress, performance, effectiveness, and scope of any state operation, activity, program, or service that primarily involves employment training or placement; and

(ii) ensure that the metrics described in Subsection (7)(a) are consistent and comparable for each state operation, activity, program, or service that primarily involves employment training or placement;

(b) make recommendations to the commission regarding how to better align training and education in the state with industry demand;

(c) make recommendations to the commission regarding how to better align technical education with current and future workforce needs; and

## SB0043S07 compared with SB0043S06

(d) coordinate with the commission to meet the responsibilities described in Subsection 63N-1b-302(4).

Section 117. Section 76-10-3201 is enacted to read:

### ~~Part 32. {Health Care Lien Prohibition~~

#### ~~76-10-3201. Health care lien prohibition.~~

##### ~~(1) As used in this section:~~

~~(a) "Debt or lien" means a debt or lien arising from a health service a patient receives.~~

##### ~~(b) "Financial interest" means:~~

~~(i) ownership of a share; or~~

~~(ii) receipt of a profit or compensation.~~

~~(c) "Health care provider" means the same as that term is defined in Section 78B-3-403.~~

~~(2) (a) A health care provider may not purchase or acquire a debt or a lien from or sell a debt or lien to another health care provider if:~~

~~(i) the patient has filed a claim or intends to file a claim for damages from an injury that led to the creation of the debt or lien; and~~

~~(ii) the health care provider provided any health service to the patient in relation to the claim for damages.~~

~~(b) An actor may not have a financial interest in a health care provider that purchases or acquires a debt or a lien from or sells a debt or lien to another health care provider if:~~

~~(i) the patient subject to the debt or lien has filed a claim or intends to file a claim for damages from an injury that led to the creation of the debt or lien; and~~

~~(ii) the health care provider in which the actor has a financial interest provides any health service to the patient in relation to the claim for damages.~~

~~(3) A violation of Subsection (2)(a) or (b) is a third degree felony.~~

Section 118. Section 76-10-3202 is enacted to read:

#### ~~76-10-3202} **Prohibition on Kickbacks**~~

##### **76-10-3201. Prohibition on kickbacks.**

(1) As used in this section:

~~(a) "Health care provider" means the same as that term is defined in Section 78B-3-403.~~

~~(b) (i) "Kickback or bribe" means a rebate, compensation, or any other form of~~

## SB0043S07 compared with SB0043S06

remuneration, that is:

(A)i direct or indirect;

(B)ii overt or covert; or

(C)iii in cash or in kind.

(ii)b "Kickback or bribe" does not include a fee that is:

(A)i shared between two or more individuals, each of whom is licensed to practice law; and

(B)ii charged for services provided in the individual's capacity as a licensee described in Subsection (1)(b)(~~ii~~(A)i).

(2) (a) An actor may not solicit or receive a kickback or bribe in return for the referral of a person to another person for the furnishing of any good or service that relates to any insurance claim or a claim for damages.

(b) An actor may not offer or pay a kickback or bribe to induce the referral of a person to another person for the furnishing of any good or service that relates to any insurance claim or a claim for damages.

(3) A violation of Subsection (2)(a) or (b) is a third degree felony.

(4) This section does not apply to an individual licensed to practice law ~~who refers the individual's client to a health care provider for medical evaluation or treatment.~~

~~Section 119;~~when referring, without compensation, a client for medical treatment or evaluation.

Section 118. Section **78B-3-403** is amended to read:

### **78B-3-403. Definitions.**

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

## **SB0043S07 compared with SB0043S06**

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of [~~Occupational and~~] Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(13) "Hospital" means a public or private institution licensed under Title 26, Chapter

## **SB0043S07 compared with SB0043S06**

21, Health Care Facility Licensing and Inspection Act.

(14) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

(15) "Licensed direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section 58-77-102.

(16) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

(17) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(18) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

(19) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section 58-71-102.

(20) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

(21) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(22) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(23) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(24) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(25) "Pharmacist" means a person licensed to practice pharmacy as provided in Section 58-17b-301.

(26) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.

(27) "Physical therapist assistant" means a person licensed to practice physical therapy,

## **SB0043S07 compared with SB0043S06**

within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.

(28) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(29) "Physician assistant" means a person licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

(30) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

(31) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(32) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.

(33) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.

(34) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.

(35) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.

(36) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

(37) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(38) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

(39) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

Section ~~{120}~~119. **Repealer.**

## SB0043S07 compared with SB0043S06

This bill repeals:

Section **58-1-101, Short title.**

Section **58-5a-305, License by endorsement.**

Section **58-15-1, Title.**

Section ~~{121}~~120. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, make the following changes in any new language added to the Utah Code by legislation passed during the 2022 General Session:

(1) replace "Division of Occupational and Professional Licensing" with "Division of Professional Licensing"; and

(2) replace "Division of Occupational and Professional Licensing Act" with "Division of Professional Licensing Act."

Section ~~{122}~~121. **Coordinating S.B. 43 with H.B. 176 -- Substantive and technical amendments.**

If this S.B. 43 and H.B. 176, Utah Health Workforce Act, both pass and become law, it is the intent of the Legislature that on July 1, 2022, the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, modify:

(1) Subsection 26-69-405(2) to read:

"~~{(4)}~~ (2) use federal money for necessary administrative expenses to carry out [~~the council's~~] UMEC's duties and powers as permitted by federal law;" and

(2) Subsection 26-69-405(4) to read:

"~~{(6)}~~ (4) as is necessary to carry out [~~the council's~~] UMEC's duties under Section [~~53B24-303: (a) hire employees, and (b)~~] 26-69-404, adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act."