



Review of Occupational & Professional Licensing

Executive Order 2021-01



UTAH | COMMERCE



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UTAH DEPARTMENT OF COMMERCE

June 25, 2021

The Honorable Spencer J. Cox, Governor of Utah
The Honorable Deidre M. Henderson, Lieutenant Governor of Utah
State Capitol
350 N State St
Salt Lake City, Utah 84114-2325

Re: Executive Order 2021-01 Requiring a Review of All Regulated Occupations and Professions

Dear Governor Cox and Lt. Governor Henderson:

On behalf of the Department of Commerce, I am pleased to submit the following report required by Executive Order 2021-01. As requested, each division within the department evaluated regulations within their purview that impact occupational and professional licensing. While all divisions have some regulatory influence on Utah's workforce, the Division of Securities, Division of Real Estate, and Division of Occupational and Professional Licensing were found to have direct impact, and are the focus of this report.

The Department has strived over the years toward its mission of strengthening trust in Utah's commercial activities by balancing the free flow of commerce with protecting the health and safety of Utah citizens. Department staff and our various boards and commissions have embraced the concept that while regulation is necessary, it can often create unintended consequences that end up harming those it aims to protect or become outdated as the economy and workforce needs shift. The efforts made with this concept in mind to right-size regulation have elevated Utah as a leader in the nation for licensing reform.

However, as we undertook this comprehensive review of our regulations for Executive Order 2021-01, it became apparent that even with the intense focus we have placed on this mission, regulatory creep was still an issue. As this report highlights, there are many areas that can be improved upon. Many of the changes are already underway; however, not all the work needed could be completed in the short six months allotted by the executive order. Many of the areas of concern will require time and analysis to ensure that the proper solution is codified. Additionally, many changes will require legislation.

Further, as the Department approached this review, it was evident that even as an agency actively seeking reform opportunities, we could not always prevent unintended consequences from forming within our regulation. This was especially evident in dated regulation that had not kept up with technological and market needs.

It is our firm belief that in addition to being reasonable and reliable at the time they are enacted, regulation must remain relevant in order to best serve the public. Within this report, the various divisions share ideas to update statutes and rules. Further, as a Department, we propose a revision to Utah's occupational and professional licensing reform structure that will leverage the efforts that all executive branch agencies have put forth over the last several months by standardizing the guiding principle that we should routinely take a fresh look at our regulations to ensure balance.

The systematic licensing review process proposal found within this report will continue the hard work that our agency, and so many others, have undertaken at your direction. As stated in the Executive Order, "government should periodically review regulations to ensure they are serving their intended purpose." It is our hope that resourcing robust and dispassionate licensing analysis will not only reduce frustration with the licensing reform process amongst stakeholders, but will both encourage government to keep pace with the need to evolve with changes in the economy and spur the long-term licensing reform necessary to open up pathways to economic opportunities for Utahns now and in the future.

Sincerely,

A handwritten signature in blue ink, reading "Margaret Woolley Busse".

Margaret Woolley Busse
Executive Director
Department of Commerce
State of Utah

Review of Occupational & Professional Licensing in Response to Executive Order 2021-01

Utah Department of Commerce

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REVIEW OF OCCUPATIONAL & PROFESSIONAL LICENSING IN RESPONSE TO EXECUTIVE ORDER 2021-01

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OVERVIEW

Optimal systems of commerce enable creative and useful exchanges of goods and services in ways that support human thriving and increase individual and societal wealth. Government is a small but important component of a healthy commercial environment, enabling a system that protects against predation. These protections decrease risk, and thus the ultimate cost, of commercial exchanges. Effective and efficient regulation of conduct that might injure others instills trust that ultimately adds more value than the regulation costs.

Nevertheless, the task of government regulation is not best undertaken with a set of constant rules that, once adopted, simply continue in perpetual effectiveness. Rather, as people, skills, technology, and markets change, government must constantly reevaluate rules to ensure they are productive and add value to the commercial system, instead of burdening it.

Recognizing that constant evaluation of existing governmental rules and processes is necessary and helpful, Governor Spencer J. Cox and Lt. Governor Deidre M. Henderson signed Executive Order 2021-01, requiring state executive agencies to:

review administrative rules and other regulations for occupational or professional licenses within the agency's scope of authority and identify rules and regulations that are no longer necessary or can be amended to reduce barriers to working while still protecting the health, safety, and well-being of Utah residents.¹

Under this direction, the Department of Commerce undertook a rigorous review of its administrative rules, agency practices, and the statutes authorizing those rules and practices. Agency management also held 25 meetings with legislators, industry representatives, and reform groups. Further, the department conducted a stakeholder survey seeking feedback on what was and was not working in Utah licensing and received 80 responses. This report outlines the department's review process, the actions to which it has led, and numerous recommendations for consideration by other policymakers.

Scope of Review

In response to Executive Order 2020-01, department management immediately began to establish the scope of our review, which included a complete review of all statutes and rules involving occupational and professional licensing within the department. While the Division of Occupational and Professional Licensing (DOPL) is the largest and most obvious participant in occupational and professional licensure within the department, each division was evaluated for inclusion in the review. The Division of Real Estate (DRE) and the Division of Securities (SEC) also license professionals and were included in this review.

Although other divisions' work falls outside the scope of Executive Order 2020-01, the exercise of considering whether they were included caused each division agency to give additional thought to how that agency's rules might affect work in the state. Some small rule changes to optimize rule provisions in those divisions agencies are likely to follow, despite not being included in this report.

¹ <https://rules.utah.gov/wp-content/uploads/Utah-Executive-Order-No.-2021-01.pdf>

Process

The department regulates numerous professions, each with its own statutory authorization and many with their own specific sets of administrative rules. A department employee or board member, and in many cases both, reviewed each rule to evaluate its fit under Executive Order 2020-01. In doing so, reviewers considered not merely the larger rule's necessity, but each element's utility in meeting the statutory mandate underlying the rule.

Reviewers considered a number of factors in evaluating a rule's necessity or advisability. Executive Order 2020-01 required consideration of whether a rule is necessary or artfully targeted to protect Utahns' health, safety, or welfare. The department's rules are largely compulsory under federal or state statutes. Reviewers considered whether each element of each rule was required by state or federal statute, whether a less restrictive way of satisfying the statute existed, or whether the rule was discretionary. Where the rule and all of its elements are required by law, the respective division has considered whether to make recommendations for statutory changes in Section II of this report.

For discretionary rules, department leadership and each division considered the following questions:

- Why was the rule established?
- Can the rule be repealed without the risk of significant, present, recognizable harm to the public? If not, why not?
- If a rule is necessary to protect against significant, present, recognizable harm to the public, what is the narrowest way to provide that protection? Can portions of the rule be eliminated?
- Does the rule's burden outweigh its benefit to the public? (Consideration of burdens should include burdens to those seeking licensing, preserving current licensure, and the rule's general economic effect, including decreasing the supply of the particular service.)
- Can the harm against which the rule protects be mitigated in a less burdensome way than administrative rule?
- For rules addressing process, not harm, can processes be made more user-friendly or efficient?

The results of these reviews are reported in Section I of this report, with general discussion of the findings followed by specific action already undertaken or to be undertaken. Section II includes a variety of recommendations, encompassing a regular statewide process for systematic reviews of individual professions and recommendations for licenses that could be considered for elimination from state code. In Section III, we summarize required actions and provide considerations for future reforms. An appendix highlights the department's previous and ongoing actions to improve and reform licensure within its ambit.

SECTION I

Our review of existing regulation identified a number of rules that will benefit from immediate amendment, some rules that require statutory changes or additional study to reduce barriers and achieve beneficial changes while preserving necessary protections, and the need for an ongoing internal rules review process. These findings and actions are described below.

Unnecessary and Amendable Rules

While an executive branch agency has little control over the existence or form of the statutes it is charged with enforcing, it is accountable for the rules it is both mandated and empowered to adopt in furtherance of those statutes. Accordingly, the department's agencies have reviewed its rules in light of Executive Order 2020-01. Listed below are rules the agency has identified for changes based on the order. They are separated by division for ease of reference. Some of the rule changes have been or will be undertaken by the respective divisions. Other changes require change to the underlying statutes before the agency can amend the rule. Where legislative change is required, it will be noted below.

Division of Occupational and Professional Licensing (DOPL)

In recent years DOPL has increased its proactive work to rid its rules of provisions with little nexus to the meaningful regulation of professions. Recognizing the need for this to be an ongoing and routine process, DOPL used the concepts presented within Executive Order 2020-01 as a framework to review each of the over 60 chapters that fall within Title 58, along with the corresponding rules, as part of this review. This intensive process identified a number of rules that should be repealed or amended to better tailor regulation to public need. These are presented below in a table identifying key categories of rules to be revisited. In many cases, the relevant boards have already voted to make changes and the rulemaking process has begun. In other instances, action remains. Among other things, the changes contemplated for the listed rules include broader acceptance of various exams, recognition of past experience or competence (i.e. military experience), and removal of sequence requirements for education and experience.

Reason	Rule Section
Over expansive moral character rule	<ul style="list-style-type: none">• R156-11a-302• R156-20b-302• R156-37-303• R156-47b-302d• R156-55d-302f• R156-63a-302f• R156-63b-302g• R156-73-302
Unnecessary or poorly tailored education, exam, or experience provisions	<ul style="list-style-type: none">• R156-22-302f(1)(a)• R156-46a-302a• R156-41-601• R156-47b-302a• R156-54-301• R156-55b-302a/c• R156-55c-302a/c• R156-61-302c

Outdated rules or rules exceeding the least restrictive standard to match statute	<ul style="list-style-type: none"> • Various continuing education sections² • R156-20b-302c • R156-24b-308 • R156-31b-301a/b/c/d • R156-64-302c, 304 • R156-76-302c(1)
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In addition to the in-process changes identified above, the division has also identified many items that require time and study, and are ripe for evaluation if not immediate action. Over the next year, the division will work to find the proper solution within these areas. Examples include:

- Evaluate the inclusion of professions under Emergency Order Exemptions considering the lessons learned over the last year working through both health and natural disaster emergencies.
- Explore options with various national testing providers to include offering exams in additional languages in accordance with Utah Code Section 58-1-311.
- Explore ability to offer DOPL practical exams in rural areas. Plans are already proceeding for plumbing and electrical exams.
- Evaluate method of assisting students preparing for entry to professions by developing testing resources, e.g. lending library for expensive test prep materials.
- Review education requirements set by administrative rule to ensure they are tightly aligned to the professional practice and harm reduction associated with the need for licensing.
- Evaluate the efficacy of permitting additional education evaluations for individuals who received initial training outside the United States or from non-approved programs.
- Review criteria set in administrative rule for dental anesthesia permits against best practices.
- Evaluate pathways to licensure for nursing applicants who do not complete the required exam within 5 years of graduation.

Division of Real Estate

The division has identified a number of rules that can benefit from amendment or repeal, identified in the table below. Some of these will require statutory changes. For example, rule R162-2c-201(1)(a)(i) and R162-2c-202 outline the criteria for satisfying the statutory requirement that mortgage licensees demonstrate good moral character (Utah Code Section 61-2c-203(1)(b)). The expansive requirement to demonstrate good moral character is a traditional requirement for many professional licenses but it suffers from overbreadth and risks unmooring actual requirements from a meaningful nexus with specific professions. While the division will consider whether its rule is more expansive than the statutory requirement, the Legislature should consider whether the statute should be tailored to provide guidance better targeted to the public's and professions' needs.

Reason	Rule Section
Over expansive moral character rule	<ul style="list-style-type: none"> • R162-2c-201(1)(a)(i) • R162-2c-202(1) • R162-2g-310(4)
Over expansive crime of moral turpitude rule	<ul style="list-style-type: none"> • R162-2c-202(1)(a)(i)(C)(I) • R162-2g-310(4)
Unnecessary Fees	<ul style="list-style-type: none"> • R162-2f-105

² All continuing education provisions will be amended to require retention of records for only one two-year renewal cycle, not the four to six years many sections currently require.

	<ul style="list-style-type: none"> • R162-2g-306b(3)(c) • R162-2f-202d
Increase authority for technology- enabled education	<ul style="list-style-type: none"> • R162-2c-203(6)(h)(ii)(A)
Outdated rules or rules exceeding the least restrictive standard to match statute	<ul style="list-style-type: none"> • R162-2c-301b • R162-2f-402 • R162-2f-202b(5)(c)

In addition to the existing rules listed above, the division is working on expanding pathways for licensure. Becoming a licensed appraiser is a complex and difficult process that is often restricted by the applicant’s ability to obtain timely experience opportunities. Recently, Practical Applications of Real Estate Appraisal (PAREA) was developed by the Appraisal Foundation, providing a new pathway for aspiring appraisers to fulfill their experience requirements utilizing technology for practical experience in a virtual environment. The board and division are working to incorporate this new experience pathway, providing more opportunities for aspiring appraisers to train and become licensed in Utah.

Division of Securities

Utah's securities rules are founded in statute and based largely on national model rules. They are substantively equivalent to those of most other states and consistent with parallel federal requirements. In addition, two Utah rules served as models for subsequent North American Securities Administrators Association (NASAA) model rules. (Whistleblower Rule and Venture Capital Rule). The division adopts new rules only when necessary. Most recent division rules impose no additional requirements but rather expand exemptions from regulations.

For instance, Rule R164-4-9 exempts some investment advisors from licensure. This rule was adopted after consultation with stakeholders in the Utah venture capital community and members of the securities section of the bar to design a rule to remove barriers for venture capital activities and for investment advisors to institutional investors. Utah's was one of the first such rules, before the SEC and NASAA model rule. The division is in the process of recrafting the rule, working with industry stakeholders and the securities section to modernize it and incorporate other beneficial exemptions, including those added in the NASAA model rule.

The Division of Securities’ comprehensive review revealed that Utah securities rules, and broader regulatory system, are not overly burdensome, containing numerous exemptions from licensing and registration while still protecting investors, and are largely based on federal requirements and nationally accepted model rules. No rules were identified for changes.

Removing Barriers

Multiple ways exist to ease entry and continuation for licensed professionals. The department has explored these options in recent years, and has done so more deliberately in response to Executive Order 2020-01. Suggested changes in these various categories will be described in subsections below. The changes suggested primarily involve legislative changes and are beyond the department’s ability to address by rule.

The department considered changes that could be made to expand opportunity and markets for professionals. One way to do this is to split large scope-of-practice licenses into multiple micro-licenses, allowing narrower qualification for a variety of trades and professions. The department is also evaluating ways to shift licensing and continuing education requirements to competency requirements based on each profession’s suitability for such a shift. A shift away from education-based requirements can likely ease costs and burdens on entry in many cases. Some of these

competency-based requirements will require expert analysis to guide statutory changes. Other suggested changes fall into miscellaneous categories and will be described below.

While the department recognized the need for change and is therefore including the concepts in this report, the short time frame allotted for the executive order review did not allow for an in-depth analysis of many of these items. Many, if not all, of these changes should undergo a robust review to ensure the proper balance of regulation is found.

Create narrower licenses from broad scope-of-practice licenses

There are a few obvious places in the Utah Code that could benefit from disintegrating broader categories into narrower licenses. One subject of repeated attention is the Cosmetology and Associated Professions Licensing Act, Utah Code Title 58, Chapter 11a. Another area for ripe for review is the Mental Health Professional Practice Act, Utah Code Title 58, Chapter 60.

In recent years the cosmetology statutes and rules have been challenged for regulating too broadly practices that might be better suited for narrower licenses. These narrower licenses could specifically target harm reduction for the public rather than product quality or best practices that may be addressed by typical market forces. This could correspondingly reduce education and training requirements.³ Hair braiding, eyelash application, and eyebrow threading are services that can plausibly be offered with better-targeted training requirements that do not include the full suite of training required for a broadly scoped cosmetology license.

The Mental Health Professional Practice Act could also benefit from refined scope of practice rules. The classification of social service worker⁴ should have its scope of practice reviewed to evaluate whether changes to educational pathways are warranted and whether an associate level license is appropriate. Additionally, remaining license types and scope of practice provisions should be evaluated for necessity and balance.

Competency measures to replace educationally-based requirements when possible

Over time, the apprenticeship models of the past evolved into largely education-based models of qualifying for licensure. While there is a place for classroom components in training for many professions, often the increase in classroom education has come at the expense of competency-based reviews. Whether in initial qualification for licensure or as continuing education requirements for existing licensees, the public is not always well-served by this shift away from practical competency. Similarly, many competent professionals have their path toward licensure burdened by educational barriers with no practical bearing on their competency to practice.

For a professional trained in the US military it is disheartening to finish one's service to the country through a trade only to find oneself merely at the beginning of a path toward civilian licensure. This example is emblematic of the necessary shift toward competency-based evaluations where appropriate. DOPL has identified areas for review to better incorporate competency-based evaluations in Utah's professional licensure system.

Under current Utah law, DOPL's director may exercise some discretion, often by rule and with a board's assent, in allowing a competency-based evaluation to substitute for a time-based one.⁵ The director may not employ this provision to substitute for an educational component required

³ While there have been legal challenges (*Clayton v. Steinagel* 2011; *Rojas v Steinagel*, 2021.), there have also been repeated discussions with legislators and other interested groups concerned limited scope licenses that currently fall within the cosmetology statute. This area is one of perpetual tension between legislators, the industry, and reform-minded groups.

⁴ Utah Code § 58-60-202 (2) and 58-60-205 (4)

⁵ Utah Code § 58-1-301(5)

by law. The department recommends that this concept be studied to determine if, within certain professions, equivalent competency-based evaluation could be substituted for educational components.

Additionally, Utah’s electrical and plumbing trades offer both educational and experience pathways, as well as a method to expedite licensure by demonstrating competency.⁶ This additional pathway focuses on an individual’s ability to safely practice rather than a one-size-fits-all set of credentials. In these examples, DOPL and the respective boards were granted rule-making authority to establish the expedited pathways. This language could be considered for other licenses, allowing for expedited licensure pathways where appropriate.

DOPL has also identified that some of its own rules might create limits where none are necessary. For example, it will review R156-11a-901, which does not allow on-the-job internships to apply towards credits required for graduation.

DOPL has also tasked its boards with reviewing DOPL’s rules with an eye toward identifying professions for which continuing education requirements might be replaced by competency-based ones. These might include work or volunteer options that provide other benefits to the public and participants. Instead of requiring accredited courses, the rules might accommodate employer-required in-service hours aimed at harm reduction. Military training might also fulfill requirements that are now met only through accredited courses.

Over the last several legislative sessions, DOPL statutes were modified to allow for increased acceptance of other jurisdictions licenses. Specifically, SB 23, 2020 General Session, allowed for DOPL to issue a Utah license to a licensee from any U.S. state, district, or territory if the scope of that jurisdiction’s license was similar to the Utah scope and the individual had held the license in good standing for at least one year. A similar provision may be appropriate for real estate professionals; however, it is recommended that all applicants be required to take and pass the 24-hour Utah law portion of pre-license education.

Miscellaneous issues identified

Among the other matters identified for possible change are a number of isolated provisions in statute and rule that might be altered or removed to better enable reasonable professional licensure while continuing to protect the public. Most of these suggestions involve statutes but some have rule components that the divisions will address with the relevant boards.

Within DOPL’s pertinent areas, a number of miscellaneous issues have been identified for further action or evaluation through a robust review process. These appear in the following table.

Profession	Issue
Multiple Professions	<ul style="list-style-type: none"> • Review high school or equivalent graduation requirements to determine necessity • Identify if foreign education or non-approved schools could undergo evaluation for adequacy of coursework • Evaluate whether pre-professional or general studies classes can be waived or completed by testing • Evaluate specific endorsement restrictions against changes made by 2020 GS Senate Bill 23

⁶ Utah Code § 58-55-302

	<ul style="list-style-type: none"> Consider narrowing the circumstances under which use of specific terminology is prohibited without professional licensure (i.e. prohibiting using the term “engineering” to describe activities to be performed if the individual offering is not licensed (Section 58-22-305(1)); a marketing approach touting a well-engineered multi-tier wedding cake should not be prohibited)
Cosmetology professions	<ul style="list-style-type: none"> Evaluate reduction of apprentice hours Evaluate if barbers should be authorized to perform some skin care.
Pharmacy	<ul style="list-style-type: none"> Engage in complete rule review after recodification of the statutory Pharmacy Practice Act is complete
Design Professions	<ul style="list-style-type: none"> Amend the definition of “principal”⁷ to reflect changing industry norms
Mental Health Professions	<ul style="list-style-type: none"> Consider reduction of post-graduate hours⁸; Utah requires 4,000 which includes general duties, while most other jurisdictions require 3,000 or fewer if targeted to professional competencies Study supervision requirements to ensure appropriate balance, reporting requirements, and related details
Vocational Rehabilitation Counselors	<ul style="list-style-type: none"> Consider reduction of post-graduate hours; Section 58-78-302; Utah requires 4,000, while most other jurisdictions require 3,000
Professional Geologists	<ul style="list-style-type: none"> Review experience requirements; Section 58-76-302(4) requires five years of practice with a bachelor’s degree; other professions require only four
Athlete Agents	<ul style="list-style-type: none"> While this is a uniform act, registration requires a number of items that are not used or useful (for example, Subsections 58-87-202(1)(a) (place of birth); (c), (e)-(f), and (2)-(4)

The Division of Real Estate has identified that the Real Estate Licensing and Practices Act contains a few provisions that would benefit from legislative change. First, Section 61-2f-204(1)(e)(ii) requires that a license be denied if an applicant fails to disclose certain criminal history. While a failure to disclose such an industry-related crime is serious, the DRE has concluded that denial in such circumstances should not be automatic. Instead, discretion should be given to account for the unique circumstances of each case. Likewise sections⁹ that reference the general term “good moral character” should be modified to remove the ambiguous term and allow the division discretion for unique circumstances that consider the individual applicant’s aggravating and mitigating circumstances.

Ongoing Departmental Rule Review

In May of this year, Executive Order 2021-12 highlighted that, “the public is best served by clear, cohesive, and concise administrative rules.”¹⁰ The department has generally done well at this, both in initial drafting and in statutorily mandated rule reviews under Section 63G-3-305. However, the department’s work on Executive Order 2021-01 has shown this must be an ongoing and

⁷ Utah Code § 58-3a, 58-22, and 58-76
⁸ Utah Code § 58-60-205, 58-60-305, 58-60-405
⁹ Utah Code § 61-2c-203; 61-2e-201; 61-2g-311, 313, and 314
¹⁰ <https://rules.utah.gov/wp-content/uploads/Utah-Executive-Order-No.-2021-12.pdf>

regular process that ensures the rules balance necessary protections without creating unnecessary barriers.

The department will institute internal processes addressing both executive orders, requiring existing rules and proposed rules be carefully considered for both quality and effectiveness, within statutory constraints. While statute requires agencies to review administrative rules, the department will implement a more robust review process for occupational licensing rules. This process will ensure a more deliberate review than the statute requires and prevent accretion of rules that can hinder thriving professionals and their clients.

As the department develops a new process for the mandated five-year reviews, each division with rulemaking authority will assign an Administrative Rules Coordinator. The coordinator will receive training from the Office of Administrative Rules and be responsible to coordinate the rulemaking process within their division and with the department. For each initial rule and rule change, the Administrative Rules Coordinator will ensure that:

- each rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;
- interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);
- standards reflect consistent and sound public regulatory policies;
- the rule is consistent with the current edition of the Office of Administrative Rules' Rule Writing Manual for Utah; and
- the division evaluates the content of the rule to ensure the rule is necessary and adopts the least restrictive, practical method of implementing the requirements.

For each rule's statutorily mandated five-year review, a more extensive review will be undertaken to identify rules that are no longer necessary or can be amended to reduce barriers. The division and department will consider a variety of items. Among these will be a more explicit review of the statutory authority for the rule, not just to identify if the rule is authorized, but also to ensure the rule's scope is narrowly tailored to match the authority. Additionally, the department may evaluate trends related to the profession, new technology, market innovations, and changed scopes of practice to assess whether the rules might adapt to reflect changed conditions and better serve Utahns while remaining faithful to the statute and protection of public interests.

This thorough review will help identify not only rules that might be altered to better suit changing markets and needs, but matters that can be brought to the legislature for consideration. While the department administers only what the legislature dictates, it can bring its expertise to bear to inform the legislative process when change should be considered. In addition to this heightened review of administrative rules, the legislature should consider a more functional, permanent process for occupational licensing review with a scope broader than the department's administrative rules.

SECTION II

Regular, Systematic Review of Professions

The current system for periodic review of professional licensing has not functioned well. The legislature established the Occupational and Professional Licensure Review Committee to evaluate proposals for new types of professional licensure, to routinely examine existing professional license categories, and to provide a more thorough review of each licensed occupation at least once every ten years.¹¹ Review criteria within current statute captures many best practices; however, the lack of funding or support for the committee has impeded its function. As such, throughout its existence the committee has rarely performed the required reviews. Nearly all stakeholders the department consulted in its review expressed frustration at the lack of a predictable process for reviewing occupational licensing matters. As stakeholders have adapted to the Occupational and Professional Licensure Review Committee's limitations, reforms have occurred intermittently as industry or other public interest groups muster the support for measures designed to tackle specific concerns.

As noted in the discussion of departmental rules above, periodic reviews of regulations can help prevent a stifling accretion of restrictions that might serve (or once have served) some useful purpose in isolation but combine to create unnecessary barriers to enter the profession or negatively affect the people and professions they are intended to protect. A new system for broader review should be strongly considered. The department proposes one here.

Regular, ongoing, impartial review by the executive branch

One of the key insights from stakeholders the department consulted was that an executive branch review and advice process could be more predictable and insulated from political influences than the existing Occupational and Professional Licensure Review Committee process. Such a process would continue to allow the legislature to be the key decision maker on occupational licensing issues while benefiting from the regularity and expertise of the executive branch. Wherever the executive function is located, it would be guided in its work by legislative priorities and report its work to the legislature for ultimate action. If it suggested actions that were within the then-current authority of other agencies to address, those agencies would be required to independently adopt those recommendations, or not, based on their own authority. This structure matches feedback the department received.

Various groups opined that an executive branch review could provide greater impartiality and distance from legislative decisions that might result in better information for legislative decision makers. Of course, such a system must be trusted by all stakeholders, including the Governor, legislature, trade associations, public interest groups, affected agencies, and the public. Professional licensure reform groups affirm these conclusions, with their suggested best practices including robust, ongoing professional review with expert analysis.

Through research and discussion with stakeholders, the department has identified a number of parameters the legislature might consider for such an executive review process. These address the organizational location of the process, its necessary funding and funding mechanism, and professions that might be included.

The department recommends the location of the proposed ongoing review be the Department of Commerce. Commerce has the benefit of deep, ongoing expertise about not only the professions it regulates, but with broader reform efforts, market trends, and relevant data. Concerns about potential conflicts with locating the function would be mitigated with dedicated review staff, located

¹¹ Utah Code Section 36-23-101, et seq.

within Commerce but not within the licensing divisions, that are removed from the day-to-day functioning of license approvals and discipline.

An ongoing effort that enables review of each licensed profession every ten years, while allowing for legislative prioritization and one-off reviews to address immediate legislative proposals, would require four full-time equivalent positions if located in Commerce. This would allow maintenance of ongoing expertise sufficient to handle both regular reviews and other proposals that are currently within the Occupational and Professional Licensure Review Committee's purview.

Funding could be achieved with an additional appropriation from existing fees collected in the Commerce Service Fund. The department's fees regularly bring in more revenue than appropriated to the department. Increasing the department's appropriation from its collected fees to cover the cost of this program would allow full program funding without increasing fees for licensees or reducing funds available for any other licensing agency's ongoing funding.

This executive function would include all licenses issued by executive branch agencies within the State of Utah.

Ongoing legislative input to executive branch

Creating a new executive review process for occupational licensing is likely to increase the legislature's input in occupational licensing matters. It will do so by providing more frequent and realistic opportunities for considered legislative guidance instead of intermittent consideration of proposals brought by others. Intermittent proposals by other interests would, of course, not be prohibited.

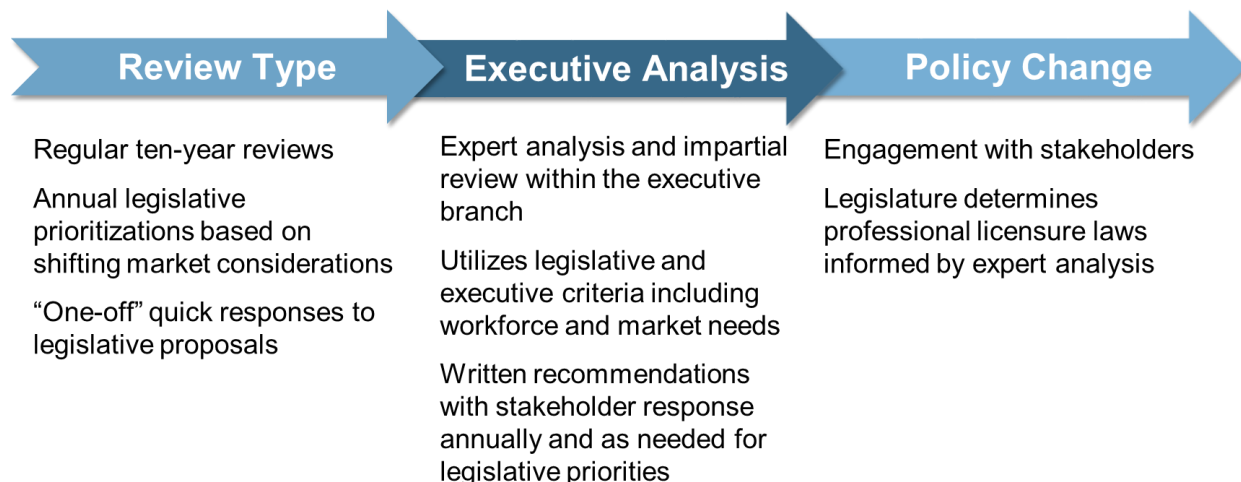
The existing Occupational and Professional Licensure Review Committee has not met frequently and has not undertaken many of the statutory functions assigned to it. The department's review suggests this is largely the function of constraints on legislative service and resources. Legislators and their staff are busy with a variety of meetings and functions. Legislators and their staff cannot engage in full-time consideration of each area of state government. Dedicated professionals cannot always dedicate themselves to every area of their profession each year. Further, limited budget resources cannot always be employed by the legislature to procure expert analysis of areas beyond its native expertise. Legislative delegation to an executive entity to engage in deeper analysis is more likely to allow consistent, meaningful legislative input.

The work of an executive agency reviewing occupational licensing provisions would be informed in the first instance by a set of codified legislative principles and directions, as well as incorporate executive input. Additionally, the legislature could annually prioritize reviews for consideration and request one-off, quick responses to legislative proposals. Reviews could include broad evaluation of professions, universal analysis of education provisions, market evaluations, and other as-needed matters. Annually prioritized and one-off reviews would be additional to the scheduled, ongoing reviews of each profession every ten years. The executive agency charged with these reviews would perform its work on an ongoing basis as informed by legislative priorities.

Individually or collectively, the results of these reviews would be reported to the legislature for consideration for further action, and include stakeholder input specific to the completed analysis. Thus, the legislature would begin its legislative work by prioritizing issues for consideration based on informed executive input and conclude its legislative work by implementing, or not, executive recommendations, that include stakeholder input, based on earlier legislative input.

Under this updated process, more frequent review of all professions would occur systematically, with an emphasis on nimble legislative guidance. This would promote responsive, relevant, and reliable regulation that would reduce frustration and pain points for licensees and other

stakeholders and facilitate trusted and ongoing licensing reform as part of Utah’s legislative and regulatory DNA.



❖ Promotes relevant and stable professional licensing policy
❖ Facilitates trusted and ongoing licensing reform as part of Utah’s regulatory DNA

Licenses to consider for evaluation utilizing the proposed process

The department’s current review of existing licenses revealed some license classifications that should be evaluated through the proposed process. In many cases these are classifications practicing in a narrow set of circumstances that are related to other existing licenses. Others seem to have limited utility or other circumstances warranting elimination.

Profession	Explanation
Environmental Health Scientist 58-20b	<ul style="list-style-type: none"> License is required for only employees of government agencies that can monitor competence and performance There are numerous exemptions A national certification is the basis for licensure
Medication Aide Certified 58-31b	<ul style="list-style-type: none"> Expands the CNA designation, allowing medication tasks. This may be more effectively accomplished through an exemption for a properly trained CNA Currently requires 2,000 hours experience, 60 hours education, 40 hours on-the-job training, and an exam Federal legislation requires health care facilities to perform background checks, which will reveal many of the issues DOPL’s review was designed to address
Controlled Substance Precursors 58-37c	<ul style="list-style-type: none"> Review possible reduction from license to registration Current requirement is for reporting, with no qualifications to obtain the license Evaluate FDA, DEA, and other federal requirements to ensure Utah is not duplicating reporting requirements
Therapeutic Recreational Technician 58-40	<ul style="list-style-type: none"> One of three related classifications This classification is limited to on-site supervised activities Duties are limited and generally overseen by other licensees The lack of independent scope suggests licensure may be unnecessary to protect the public

Certified Dietician 58-49	<ul style="list-style-type: none"> • Current certification simply verifies national certification • No unlawful conduct or other scope provisions exist in Utah law • Countervailing considerations may exist if continued licensure is needed for medical insurance reimbursements (current CMS guidance do not require this, so state certification is likely unnecessary to qualify)
Building Inspector 58-56	<ul style="list-style-type: none"> • Building inspectors are employees of or contractors for regulatory agencies that can monitor competence and performance • A national certification is the basis for licensure
Deception Detection Examiners, Interns and Examination Administrators	<ul style="list-style-type: none"> • Duplicated requirements as individuals who are licensed are generally employed by law enforcement agencies, and are POST certified • Currently only 32 licensees (20 Examiners, 1 Intern, 11 Examination Administrators)
State Certified Court Reporters 58-74	<ul style="list-style-type: none"> • Current certification simply verifies national certification • Judicial branch oversees its employees' certification
Certified Medical Interpreters 58-80a	<ul style="list-style-type: none"> • Current certification simply verifies national certification • No additional harm reduction measures within Utah law • Statute offers competitive edge by allowing Department of Health and the Department of Human Services to give preference when awarding contracts to state-certified providers (58-80a-601)
Online Prescribing, Dispensing, and Facilitation 58-83	<ul style="list-style-type: none"> • Evaluate need for all three classifications. There are currently 2 online facilitators, 2 online contract pharmacies, and 3 online prescribers. • If need is identified, consider restructuring as a certification or endorsement to expand the scope of another existing license
State Certified Music Therapist 58-84	<ul style="list-style-type: none"> • Current certification simply verifies national certification • The only conduct provisions are discipline by the national organization • The state certification appears to serve merely as title protection
State Certified Commercial Interior Designers 58-86	<ul style="list-style-type: none"> • Current certification simply verifies national certification • Scope is very limited; design is covered only when a permit is obtained independent of an architect in certain circumstances; other interior design is exempt

SECTION III

Required Actions

The Governor and legislature should consider the following actions.

Modification to board and division duties

An integral part of any program, plan, or partnership is clear expectations. Over the last decade, the legislature has demonstrated a desire for the department to be mindful of licensing reform. Executive Order 2021-01, issued just hours after inauguration, emphasized the same message. It is requested that general authority be added to the duties of each division and the boards they oversee to include language that focuses these expectations. For example, the Division of Occupational and Professional Licensing Act could be modified as follows:

- In 58-1-202, modify the first board duty, subsection (1)(a), to “(a) recommending to the director appropriate rules and statutory changes, including removal of barriers that are no longer necessary or effective in protecting the public and enhancing commerce.”
- In 58-1-301, amend subsection (1)(b)(i) to “(i) contain documentation of the particular qualifications required of the applicant to comply with these statutes or rules promulgated under these statutes”;
- In 58-1-401, provide language to address creating rules for aggravating and mitigating circumstances that allow the division to provide individual consideration to applicants.

Statutory changes

The department’s primary focus was to evaluate the administrative rules within its purview to identify those that are no longer necessary or could be amended. In doing so, however, many items were also identified within statute that create barriers, could be more closely tailored to address harm, or provide clarity. Previously, in Section I: Reducing Barriers, concepts were presented that would require additional review prior to concrete statutory change proposals. In addition to those suggested review items, many areas of statute lend themselves to immediate solutions. Below is a list of suggested modifications to statute addressing those needs.

Profession	Reason
Title 58, Multiple: <ul style="list-style-type: none">• Funeral Services 58-9-302• Health Facility Administrator 58-15-4(1)• Veterinary 58-28-304• Nurse Midwife 58-44a-302• Burglar Alarm 58-55-302(3)(k)(vii) and (l)(iii)• Security 58-63-302• Deception Detection 58-64-302• Online Prescribing, Dispensing, and Facilitation 58-83-302	<ul style="list-style-type: none">• Overbroad good character provisions should be removed in favor of the standards found in 58-1-401
Title 58, Multiple: <ul style="list-style-type: none">• Podiatry 58-5a-305• Health Facility Administrator 58-15-4(6)• Optometry 58-16a-302	<ul style="list-style-type: none">• Individual section endorsement provisions are out of line with 58-1-302, and overly restrictive considering the profession

<ul style="list-style-type: none"> • Veterinary 58-28-304 	
Health Facility Administrators: 58-15	<ul style="list-style-type: none"> • General recodification to match division’s standard outline
Environmental Health Scientists 58-20b-102(4)(ii):	<ul style="list-style-type: none"> • Rather than overbroad “Food Quality,” the term should be changed to the more measured, harm-focused “Food Safety”
Engineers 58-22-102(10)	<ul style="list-style-type: none"> • Remove the word “direct” from supervision requirements, and reference the definition of supervision in Section 58-22-102(16)
Speech Language Pathologist and Audiologists 58-41	<ul style="list-style-type: none"> • The board has requested that an exemption from licensure be created for the practice of Newborn Hearing Screenings that is similar to the exemption for elementary audiometry found in 58-41-4(1)(i). Rather than being employed by a medical doctor, however, the exempt individual would be the trained representative of the program responsible for the newborn hearing screening
Security 58-302(1)(c)(ii)	<ul style="list-style-type: none"> • Replace corporate officers with “responsible management personnel”
Chiropractic 58-73-302(1)(e)	<ul style="list-style-type: none"> • Exams are incorrectly identified/named. Subsection (i)(B) is clarified in rule to be either Part III or the SPEC; Subsection (i)(C) should be “Physiotherapy” • Consider whether a rule grant of “or other equivalent” could be added (similar to (iii)) so DOPL can address future exam updates nimbly
Utah Vital Records 26-2-2(11)	<ul style="list-style-type: none"> • Include Certified Nurse Midwives in the definition of “health care professionals”
Residential Mortgage 61-2c	<ul style="list-style-type: none"> • Remove overbroad good character provisions • Remove language authorizing the division to collect “reasonable expenses incurred by the division in processing the application” in favor of only the division’s set application fees • Allow for a mortgage licensee to have a license revocation vacated after a hearing before the mortgage commission
Appraisal Management Company 61-2e	<ul style="list-style-type: none"> • Remove overbroad good character provisions • Remove requirement that an individual in violation of the chapter pay the costs incurred by the division
Real Estate 61-2f	<ul style="list-style-type: none"> • Remove automatic revocation for failure to disclose a criminal record in favor of allowing discretion based on aggravating and mitigating circumstances • Remove fee for changing an address, name, etc. • Remove requirement that an individual in violation of the chapter pay the costs incurred by the division • Clarify or provide rule making authority surrounding the difference between commission sharing and the legality of inducement and closing gifts
Real Estate Appraiser 61-2g	<ul style="list-style-type: none"> • Remove overbroad good character provisions

Considerations for Future Licensing Reform

The review effort the department undertook in response to Executive Order 2021-01 was robust. While many actions have occurred and will soon occur to implement findings, other areas were identified that are susceptible for future study. Thorough review of these items could not occur during the time set for completion of this review. Below are items the department, the legislature, or a future executive reviewer might profitably consider for future reform. A few of them have general application while others are specific to certain professions.

General

- Study effectiveness of the required Suicide Prevention Continuing Education requirement that was added to multiple professions to determine if adjustments should be made.
- Evaluate existing fee waivers authorized by statute and whether additional criteria should be added. Section 58-1-301.3 currently allows for fee waivers of DOPL applicants for active duty military and those that receive certain state benefits.
- Evaluate if an individual who receives a temporary license under Section 58-1-303 should receive two opportunities to take the exam, rather than only one, or if this should be left to individual professions to determine risk.

Profession/section specific

- Pharmacy: Complete an extensive rule review after the current recodification is complete. Additionally, evaluate the following statutory provisions:
 - 58-17b-305 and 305.1(2) Review necessity of specifically excluding Pharmacists from downgrading to Pharmacy Technicians.
 - 58-17b-302 Evaluate the need for each physical location of pharmacy to hold a separate license. Additionally, evaluate the need for new licensure for change of ownership, name, etc.
- Nurses: Evaluate removal of the outright, lifetime ban on violent felonies and possibly allow the division to apply the standards outlined in 58-31-302(9) to all charges (58-31b-302(8)).
- Controlled Substances: In conjunction with recodification of 58-17b, evaluate standards in statute and rule (esp. those found in the 600 series of R156-37) to ensure least restrictive/national standards are met (Chapters 37 and 37f).
- Nurse Midwives: Evaluate current Certified Nurse Midwife's controlled substance authority to determine if it should mirror their APRN peers, whose scope includes schedule II and III (58-44a-102 (9)(c) and 58-31b-803)
- Elevator Mechanics: Requirement that training be within the last ten years does not appear to be within any rule grant of statute (R156-55e-302a(1)(c)). Evaluate need and intent.
- Landscape Architects: Evaluate need for Landscape Architect Board (Section 58-53-201), which has not met since 2019.
- Security Personnel: Study the possibility of reducing continuing education requirements by requiring post-licensure in-service within the first 3 or 6 months that specifically address core competencies needed (Chapter 63).
- Real Estate: Evaluate the reinstatement criteria found in 61-2f-204(2) to ensure the criteria are properly balanced and appropriately targeted to reduce the potential harm associated with re-entry into the profession.

APPENDIX

Past regulatory changes

As identified previously, one of the major focuses of the Department over the last 10 years has been on balancing regulation within the statutory constraints provided. The following outline many of the efforts that have occurred in each division.

Division of Occupational and Professional Licensing

The division oversees over 60 occupations and professions, and continually works with legislators, individual industries, and other interested parties to find balance within regulation it oversees. This results in numerous statutory and rule changes every year. Two of the largest reforms in recent years have been the changes to the division’s use of criminal history in making licensing decisions and an expansive licensure by endorsement provision that allows the division to accept licenses from any state, district, or territory in the United States with a similar scope of practice. These changes, along with many others, are detailed in the table below.

2017	
Statutory Changes	HB 313 : Eliminated the experience and exam requirement for most contractor licenses, called “specialty” contractor licenses. Sixteen of the top twenty most regulated Utah professions recently identified in a national report were specialty contractor licenses. Exam and experience requirements were the largest obstacles to licensure.
	HB 94 : Enhanced the authority of the OPLR Committee to review regulations, both existing and proposed for all occupations and professions. Prior to HB94, the OPLR Committee only reviewed professions within DOPL if the Committee chose to review them. The law now mandates a review of all occupations and professions every 10 years. It also strengthens the criteria for reviewing each profession considered for regulation.
	SB 172 : Modified the scope of practice of barbers to permit brief massages. While the change in policy seems insignificant, it was identified by a DOPL investigator who didn’t think the practice was causing harm. DOPL staff focus on behaviors causing harm.
	SB 48 , SB 106 , SB 248 : Four licensing compacts have been adopted by the Legislature and signed by Governor Herbert during the past three sessions, including three in the 2017 session. Compacts are avenues to both simplify licensing regulation and increase worker mobility, while maintaining state authority to regulate the health professions.
	HB 262 : Eliminated a requirement for those dental license applicants coming to Utah from other states.
	Utah was one of the first states to take a broad view of telehealth practice in its statutes and rules. So long as practitioners are meeting the standard of care, the mode used to service patients is not an issue. The Legislature and Governor have facilitated the practice even more this year, passing two telehealth bills in the 2017 session.
	HB 273 : Limits the ability of DOPL to consider escalating offenses for subsequent violations unless certain conditions are met.

	<p>HB 331: Attempts to simplify the process for individuals to “port” their professional license from another state to Utah.</p>
	<p>HB 351: Provides that approved continuing education courses for contractors may include certain out-of-state courses.</p>
	<p>HB 387: Permits funeral homes to use alkaline hydrolysis as an additional method of posthumous body disposal.</p>
	<p>HB 396: Allows medical school graduates who have not yet completed the rest of their license requirements to pursue a limited license in service to medically underserved areas or populations.</p>
	<p>SB 166: Expands the scope of practice for midwives to include giving one dose of oxytocin to a client after the delivery of a baby.</p>
	<p>SB 212: Modifies the responsibilities of the OPLR Committee.</p>
Rule Amendments	<p>Nurses R156-31b OAR 42219: Gives school nurses more latitude to administer first doses by clarifying the delegation of tasks by an RN in a school setting.</p> <p>Clarifies that APRNs may choose to practice as a RN within the state of Utah (and that only APRNs who wish to practice as an RN in a Compact state need to reinstate and obtain a Utah RN Compact license.)</p> <p>Professional Engineers & Professional Land Surveyors R156-22 OAR 41843: Eases licensing requirements by removing the requirement that each applicant for licensure is to provide, in addition to a supervisor's verification, another verification from a person who has personal knowledge of the applicant's knowledge, ability, and competence to practice.</p> <p>Occupational Therapist R156-42a OAR 41473: Expands allowed continuing education pathways for licensees by allowing the supervision of Level II occupational therapy students to account for some of the required continuing education.</p> <p>Construction Trades R156-55a OAR 41348: Updates continuing education requirements by adding construction business practices to the list of courses that qualify as “core” CE, and allowing live CE courses to be taught by live broadcast so long as the instructor and student can see and hear each other.</p> <p>Electricians R156-55b OAR 41261: Eases license restrictions to assist licensees and the businesses that employ them, by modifying the immediate supervision requirement for residential electrical work so that the supervising electrician need not be physically present on the same residential project or jobsite as the apprentice requiring supervision.</p> <p>Cosmetology and Associated Trades R156-11a OAR 41260: Eases licensing requirements by providing an extended timeframe of up to five years for license reinstatement, and by removing for individuals applying for reinstatement the requirement that they pass the applicable exams within one year prior to their date of application. This substantially reduces time and costs for individuals formerly licensed in these cosmetology trades who wish to reinstate their license within two and five years from the date their license expired, as they will be eligible for reinstatement and will no longer need to</p>

	again take and pay for the written and practical exams that might otherwise be required.
	R156-67 Physician and Surgeon OAR 41111 : Streamlines and updates exam requirements by deleting certain listed testing prerequisites that are already required for physicians and surgeons prior to graduation and entrance to residency programs.
	Podiatric Physician R156-5a OAR 41047 : Streamlines and updates licensing exam requirements as follows: <ul style="list-style-type: none"> • eliminates the Utah Podiatric law exam; and • deletes the proof of eligibility requirement for the National Board of Podiatric Medical Education (NBPME) and PMLexis exams, as successful completion of these exams is already required for graduation from a podiatric physician school
2018	
Statutory Changes	HB 170 : Authorizes licensing fee waivers for full-time active duty service members of the U.S. Armed Forces, including active duty National Guard and Reserve.
	SB 227 : Expands an exemption from licensure for military spouses previously applicable only to DOPL professions to all professions licensed in the state.
	SB 60 : Authorizes fee waivers associated with renewing an inactive license for full-time active duty service members of the Armed Forces, including active duty National Guard and Reserve.
	HB 37 : Modifies Title 58 affecting multiple professions including: <ul style="list-style-type: none"> • Nail Technicians (Increases training ratio for apprentice to instructor to 2:1) • Hair Designers (Builds on previous legislation which reduces required experience hours and includes the license in certain exemptions) • Controlled Substance Prescribers (Removes Controlled Substance Database tutorial and exam requirement for renewals) • Mental Health Professionals (Allows externs to petition the Division for an extension of their license) • Nursing Professionals (Removes restriction prohibiting applicants with non-violent felonies from applying for 5 years and replaces it with a case-by-case approach)
	HB 310 : Eliminates the Lien Recovery Fund assessments, substantially reducing license fees for contractors. Repeals the Lien Recovery Fund once funds have been spent to zero. This repeal will eliminate redundancy and leave the State Construction Registry Program as the single point for State oversight of lien law.
	HB 63 : Permits required examinations for cosmetology and related professions to be offered in the native language of the applicant as available through the Division's designated test provider.
	SB 15 : Enables applicants from non-accredited programs to qualify where the Division determines their education is substantially equivalent to current education requirements for this profession.

	<p>SB 197: Significantly reduces required basic education and training and firearms training.</p> <p>HB 200: Removes an artificial barrier in statute and expands the list of regional dental clinical license exams accepted by the Division.</p> <p>HB 173: Expands licensure by endorsement requirements to create a pathway which includes one year work experience minimum and a competency requirement as determined by the Division.</p> <p>SB 184: Expands pharmacists' scope of practice to include prescribing and dispensing self-administered hormonal contraceptives under a standing order of a physician.</p> <p>HB 121: Authorizes the use of the alkaline hydrolysis process as a new method for the disposition of human remains by licensed funeral establishments in Utah.</p> <p>HB 139: Requires Medicaid and health benefit plans covering mental health to also cover physician-to-physician psychiatric consultations using telehealth services.</p> <p>HB 382: Allows physical therapists to order the use of radiologic imaging with some restrictions.</p> <p>HB 448: Expands the scope of practice for podiatric physicians to include certain procedures on the ankle.</p> <p>SB 223: Requires DOPL to compile and study information related to medical liability pre-litigation panel reviews to ensure the intent of the Act, namely to reduce the litigation burden on patients and providers, is achieved.</p>
<p>Rule Amendments</p>	<p>Pharmacists, Pharmacy Technicians R156-17b OAR 43334 Provides easier practice re-entry into the pharmacy professions by extending the permissible reinstatement period for former Utah-licensed pharmacists and pharmacy technicians from 2 years to 8 years. This means that if an individual's license expired while active and in good standing and the individual meets continuing education and certain other requirements, they may apply for reinstatement instead of being required to submit a new application for licensure complete with all supporting documents and demonstrating they meet all current qualifications.</p> <p>Also provides easier re-entry into practice for pharmacists by defining the required "professional entry degree" as the degree offered by the applicant's ACPE accredited school or college of pharmacy in the applicant's year of graduation, either a BSP Pharm or PharmD.</p> <p>Eases licensing requirements by increasing from two to three the number of NAPLEX or MPJE failures allowed to an applicant before he or she must meet with the Board to request an additional authorization to test</p> <p>Adds additional options for fulfilling continuing education requirements, including allowing one "live" hour for attending one Utah State Board of Pharmacy meeting, up to a maximum of two CE hours during each two-year period, and allowing two CE hours for each hour of lecturing or instructing a</p>

	<p>CE course or teaching in the licensee's profession, up to a maximum of ten CE hours during each two-year period. Also reduces the eight-hour "live or technology-enabled participation" requirement for pharmacy technicians to six hours.</p>
	<p>Construction Trades R156-55a OAR 43279 Expands or clarifies scopes of practice for various contractor license classifications. Eases licensing requirements by (1) eliminating the 10-year look-back period from which the two years of experience must be obtained, (2) clarifying that the tri-merged credit report is not solely required from the National Association of Credit Management (NACM), and (3) removing the six-year time limit on inactive status.</p>
	<p>Health Facility Administrator R156-15 OAR 43249 : Eases licensing requirements by:</p> <ul style="list-style-type: none"> • giving an applicant for licensure an additional option for meeting application requirements, by accepting the "Health Services Executive" (HSE) credential offered by the National Association of Long Term Care Administrator Boards in lieu of completion of an approved AIT preceptorship • allowing former Utah licensees whose licenses expired while active and in good standing, easier re-entry into practice by extending their reinstatement period from two years to five years; and • giving applicants for licensure by endorsement additional options for meeting application requirements, by allowing them to meet one of the following additional experiences or education requirements: <ul style="list-style-type: none"> a) have three years of experience; b) have two consecutive years of employment at the same facility; or c) hold the "Health Services Executive" (HSE) credential offered by the National Association of Long Term Care Administrator Boards <p>Eases continuing professional education (CPE) renewal requirements for licensees by:</p> <ul style="list-style-type: none"> • increasing the 10-hour maximum CPE credit allowed for distance learning courses to a 20-hour maximum, and • by allowing licensees CPE credit for volunteer service on committees or in leadership roles in organizations for the development and improvement of the profession, up to a maximum of 10 CPE hours
	<p>Environmental Health Scientist (and EHS in training) R156-20a OAR 43250 Allows applicants seeking licensure as an environmental health scientist or environmental health scientist-in-training to satisfy certain education requirements through greater consideration of additional coursework.</p>
	<p>Funeral Service Directors & Funeral Director Interns, Preneed Sales Agents R156-9 OAR 43092 Rule changes reflect the updating of the Utah Funeral Service Law and Rule Examination, which is required for all applicants for licensure under the Funeral Services Licensing Act (funeral directors, funeral director interns, and preneed sales agents). These changes substantially improved licensee experiences and pass rates by updating and tailoring the exams to the specific professions. The exam was restructured into two new</p>

	<p>exams:</p> <ul style="list-style-type: none"> • the "Utah Funeral Service Director Law and Rule Examination", now required for applicants for licensure as a funeral service director or funeral service intern; and • the "Utah Preneed Funeral Arrangement Sales Agent Law and Rule Examination", now required for applicants for licensure as a preneed sales agent <p>Occupational Therapist, Occupational Therapy Assistant R156-42a OAR 43017 Provides easier practice re-entry for previously licensed Utah occupational therapists (OTs) and occupational therapy assistants (OTAs) whose licenses expired while active and in good standing, by extending their licensure reinstatement period from two years to five years. This means they may apply for reinstatement instead of being required to submit a new application for licensure complete with all supporting documents and demonstrating they meet all current qualifications.</p>
2019	
<p>Statutory Changes</p>	<p>HB 90: Permits those with a criminal history to ask DOPL to “pre-determine” whether their criminal history will impact a future license application. HB 90 also elevates the standard for review of criminal history from a “reasonable” relationship to the practice of the profession, to a “substantial” relationship to the practice of the profession.</p> <p>HB 132: Allows DOPL to offer any required examination in languages other than English.</p> <p>HB 187:</p> <ul style="list-style-type: none"> • eliminates the trade exams for all general contractors; • deletes the supervising experience requirement the two years of required construction experience; • creates a concept of “expedited licensure” for plumbers and electricians and requires DOPL to report to the Legislature • encourages a change in the number of apprentice electricians and plumbers that may be supervised by a licensed individual. <p>HB 44: Allows physical therapy applicants to take their exam sooner than is currently permitted in the statute.</p> <p>HB 159: Allows CPA applicants to take their license exam sooner than is currently permitted in the statute.</p> <p>HB 226: Allows DOPL, in some instances, to waive a time-based licensing requirement in favor of a competency-based requirement.</p> <p>HB 18: Exempts from licensure those who are certified to practice “Bowenwork.”</p> <p>HB 336: Reduces the instances when an APRN’s Schedule II controlled substance prescription must be under a physician’s consultation and referral plan.</p> <p>SB 191: Permits certain individuals to perform teeth floating and supervised sedation for teeth floating without a license.</p>

	<p>SB 203: Aligns PAs with other primary care practitioners in statutory activities.</p> <p>HB 398: Allows opioid treatment programs to dispense methadone without a pharmacy license in certain instances.</p> <p>SB 157: Allows the practice of acupuncture to include limited injection therapy.</p> <p>SB 170: Reduces limitations on pharmacy technician practice.</p> <p>HB 366: Allows mental health therapists to supervise up to six trainees, including trainees in mental health licenses different than their own.</p> <p>HB 278: Eliminates the Court Reporter Licensing Board and converts the license to a certification.</p> <p>HB 104: Prohibits the Division of Substance Abuse and Mental Health from requiring a DOPL- licensed mental health therapist to also be licensed by the DHS Office of Licensing when providing mental health SUD services to prisoners or parolees.</p> <p>HB 280: Creates the position of Commissioner of Apprenticeship Programs within the Department of Workforce Services; and describes the duties of the commissioner, including coordinating with DOPL.</p> <p>SB 138: Creates an apprentice pilot program in the Talent Ready Utah Center; describes the elements and reporting requirements of an apprentice program; and modifies the membership of the Talent Ready Utah Board within GOED.</p> <p>HB 378: Permits applications for “innovated products or services” to be exempt from state regulation after review by all affected departments and the creation of an agreement about how the product or service will be provided and the public protected.</p> <p>SB 158: Includes financial harm as one of the factors to weigh whether to authorize occupational and professional licensing or continue to permit occupational licensing (sunrise and sunset review criteria)</p>
Rule Amendments	<p>Electricians R156-55b OAR 52310</p> <ul style="list-style-type: none"> • Eases exam requirements for all license classifications by deleting the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement). Before these changes, many applicants had to retake exams they already passed because the pass date was outside the one-year "rolling clock" period. Some experienced a delay of weeks to months to even years in their ability to obtain their license, while some apprentice electricians gave up and never sought to increase their level of licensure • Clarifies that an electrical contractor may comply with supervision requirements by contracting with licensed professional employer organizations to employ one or more licensed electricians • Relaxes documentation requirements -- instead of a licensee being required to carry a copy of their current license at all times, they may simply provide the license or license number upon request • In response to the concepts of “expedited licensure” in 2019 HB 187 and

	<p>“competency-based requirement” in 2019 HB 226, creates an expedited pathway for licensure as a journeyman electrician or residential journeyman electrician. Apprentices may save time and money by taking approved competency exams to either satisfy the education requirement or determine placement in training, so as to obtain a journeyman electrician license after approximately two and a half years (as opposed to the traditional four-year licensure track), or obtain a residential journeyman license after one and a half years (a six-month time reduction). This also encourages licensees to become licensed at a higher level, lets businesses more easily hire electricians, and newly licensed master electricians can create their own businesses or serve as qualifiers for other businesses</p> <ul style="list-style-type: none"> • Increases the ability to obtain licensure sooner by changing the 2,000-hour limit on a documented year of experience to a 3,000-hour limit
	<p>Plumbers R156-55c OAR 52311: Eases licensing and work practice requirements for plumbers via amendments similar to the amendments for electricians:</p> <ul style="list-style-type: none"> • removal of the one-year “rolling clock” requirement for licensure examinations in all classifications • clarification of the ability to contract with licensed professional employer organizations to comply with supervision requirements • relaxed documentation requirements • provision of an expedited pathway for licensure via competency exams • changed the 2,000-hour annual limit to a 3,000-hour limit • removal of detailed minimum hour requirements for documenting work processes.
	<p>Funeral Service Director R156-9 OAR 44095: Allows CE credit for licensees who teach CE courses, who volunteer as a subject-matter expert in the review and development of funeral service licensing exams, or who volunteer on committees or in leadership roles in any state, national, or international organization for the development and improvement of the funeral service professions</p>
	<p>CPA R156-26a OAR 44081: Expands opportunities for licensure as a CPA by providing an additional educational pathway, with board approval of each individual case, for candidates who earn undergraduate degrees from universities without an accepted accreditation if the candidates go on to earn a graduate degree from an accredited institution.</p>
	<p>Physical Therapist and Physical Therapy Assistant R156-24b OAR 43954: Streamlines application procedures by expanding the methods by which an applicant can provide proof of graduation, and providing a process for verifying an exam score for an application for licensure by endorsement. Some new graduate PTs or PTAs will be able to begin employment earlier due to not having to wait to take the national exam or wait for their school's registrar (an average reduction of three weeks). This will help eliminate employer open positions and reduce overtime to cover open positions, and allow patients to receive therapy services in a timelier manner.</p>
	<p>Nurses R156-31b OAR 43825: These amendments assist licensees and those to whom they delegate by incorporating generally accepted professional</p>

	<p>standards and best practices in the industry for nurse delegation, based on extensive collaboration between the Board of Nursing and multiple industry participants.</p> <p>Private Probation Providers R156-50 OAR 43779: These amendments update and streamline private probation service standards throughout the entire rule in accordance with current best industry practices; the amendments are based on a comprehensive review of this rule and recommendations made by the Private Probation Provider Licensing Board, the Board’s working group, and industry partners and other members of the public.</p> <p>Construction Trades R156-55a OAR 43747: Eases licensing requirements by:</p> <ul style="list-style-type: none"> • clarifying that "experience in the construction industry" is more broad in scope than the definition of "construction trades" and includes paid experience regardless if as an owner, W-2, or 1099, and regardless of licensure, and also amending the experience requirement to include experience in the military, and in an educational program. • clarifying that "two years of full-time paid employment" means 4,000 hours of paid employment; and • clarifying that a passing score on the NASCLA Accredited Examination for Commercial General Building Contractors satisfies the experience requirement, and that a four-year bachelors degree, two-year associates degree in Construction Management, or a Utah professional engineer license also satisfy the experience requirement. <p>Expands potential scopes of work for licensees by clarifying and expanding various contractor licensure classifications.</p> <p>(Temporary) Elevator Mechanic R156-55e OAR 43542: Expands the pool of licensees by extending the expiration date of a temporary elevator mechanic license from 90 days to 180 days, to allow a temporary mechanic to work when there is a shortage of licensed elevator mechanics. Also provides an extension date for a renewal of the temporary mechanics license from 90 days to 180 days, making it possible to be licensed for up to one year as a temporary elevator mechanic.</p>
2020	
Statutory Changes	<p>HB 10: This bill repeals many entities and adds sunset dates for others. The affected DOPL boards are:</p> <ul style="list-style-type: none"> • the Deception Detection Examiners Board; (repeal) • the Hearing Instrument Specialist Licensing Board; (repeal) • the Residence Lien Recovery Fund Advisory Board; (repeal) • the Alarm System Security Licensing Board; (sunset) • the Architects Licensing Board; (sunset) <p>HB 161: This bill adopted the Audiology and Speech-language Pathology Interstate Compact, simplifying practice across state lines.</p> <p>HB 274: This bill authorized unlicensed individuals to practice more of the duties currently reserved to licensed nurses. It was passed after considering access to health care, especially for vulnerable populations.</p>

	<p>HB 285: This bill enhanced the Utah Professional Health Program into a program that will help more healthcare professionals with substance use disorders by diverting them into a non-disciplinary program.</p>
	<p>HB 290: This bill changes the Hunting Guides and Outfitters Licensing Act to the Hunting Guides and Outfitters Registration Act and repeals provisions creating the Hunting Guides and Outfitters Licensing Board;</p>
	<p>HB 341: This bill expands the practice scope and capacity for associate physician license holders.</p>
	<p>HB 423: This bill expands the list of professionals who may access the Controlled Substance Database, enhancing patient care and allowing these individuals to practice to the full scope of their training.</p>
	<p>SB 23: This bill creates a significant endorsement provision, simplifying the ability of Utah-similar license holders from other states to enter Utah's market once they have safely practiced in another jurisdiction for one year. It also eliminated the vague "moral character" standard throughout the Division's statute and eliminated fees for active duty military personnel.</p>
	<p>SB 68: This bill simplified licensing application qualifications for clinical mental health counselor license applicants. More applicants will not qualify to practice at a time when more mental health professionals are needed across the United States.</p>
	<p>SB 135: This bill enhances and authorizes further expansion of teledentistry, while clarifying the standards for the practice.</p>
	<p>SB 145: This bill simplifies regulations affecting distribution of albuterol, epinephrine auto-injectors, emergency refills, and other elements of the practice of pharmacy that can help patients in need.</p>
	<p>SB 157: This bill expands eligibility for the Charitable Prescription Drug Recycling Program, authorizes an individual to transfer certain unused prescription drugs to a physician's office for donation to the program; and amends rulemaking requirements for the program.</p>
	<p>SB 201: This bill clarifies how the Division may utilize an applicant's criminal history when applying that history to a decision to license. It also limits the Division's authority in using criminal history to the most egregious types of behavior.</p>
Rule Amendments	<p>Nurse/APRN R156-31b OAR 53200: Provides clarification and additional flexibility for students and educational programs by clarifying that 1,000 hours will be credited as a block for an applicant's completion of APRN clinical experience in an approved education program in psychiatric mental health nursing, regardless of the number of hours completed by the Applicant, and adding an additional supervisor option of a licensed psychiatrist for the completion of clinical hours.</p>
	<p>Hearing Instrument Specialist R156-46a OAR 53102: Expands opportunities for licensure by (1) reducing the minimum score on the Utah Law and Rules Exam from 85% to 75%; (2) providing that an intern who receives a failing score on any section of the IHS Practical Examination for Interns may retake that section within 60 days without retaking the entire exam; and (3) providing</p>

	<p>a pathway for International Licensing Exam (ILE) retakes.</p> <p>Eases continuing education (CE) requirements by: (1) reducing required CE hours from 20 to 16; (2) increasing allowed CE courses to those approved by the American Academy of Audiology; and (3) allowing licensees the additional option of fulfilling CE requirements by maintaining NBC-HIS board certification.</p>
	<p>Pharmacy (Remote Dispensing Pharmacy) R156-17b OAR 53070: In response to comments received from the previously filed rule, these amendments further streamline the operating standards for a remote dispensing pharmacy, including removing the requirement for applications to go before the Board for Division approval, and for the Board to review applications if there will be a remote dispensing pharmacy in the same location.</p>
	<p>Mental Health Professionals -- R156-60 -OAR 53064; R156-60a -OAR 53065; R156-60b -OAR 53071; R156-60c -OAR 53066; R156-60d -OAR 53067 Utah State Bulletin, 10/01/2020, Vol. 20: These amendments establish definitions and criteria for a written supervision contract and supervision forms for all of the professions included in the Mental Health Professionals Practice Act, and add specific requirements to ensure that supervision is conducted by a qualified supervisor and appropriately documented. These amendments codify best practices for the profession by providing direction in the process of supervised training required for new professionals learning proper techniques in a clinical setting, and were designed to allow for greater efficiency in supervision while allowing supervisees to obtain much-needed proper documentation of their supervision hours.</p> <p>The amendments also streamline and provide consistency in all CE requirements among the mental health and substance use disorder counselor professions by incorporating the continuing education requirements from their various practice act rules into an "umbrella" Mental Health Professional Practice Act Rule.</p> <p>These amendments also assist employers by clarifying that the statutorily required suicide prevention courses may be approved, conducted, or sponsored by various listed entities including a mental health agency that provides mental health services.</p>
	<p>Construction Trades R156-55a OAR 52921: Contractor license classifications and their scopes of practice are significantly consolidated and expanded throughout to increase an applicant's ability to obtain one or more licenses to practice, particularly in the specialty construction trades, while certain additional activities are identified as not requiring a contractor's license.</p>
	<p>Cosmetology and related trades R156-11a OAR 52505: Expands the opportunities for licensure by: (1) reducing the required passing score for the National Interstate Council of State Board of Cosmetology (NIC) exams from 75% to 70% (which was also expected to create a cost savings of \$136,440 ongoing to an estimated 1,516+ applicants annually who will pass the NIC exams at the lower rate); and (2) adding a third approved education or</p>

	<p>credential evaluation service provider. Also expands licensee scope of practice by reducing the supervision requirements for dermaplaning from direct supervision to general supervision.</p> <p>Dentist R156-69 OAR 52481: These amendments enhance mobility to Utah by updating the anesthesia and sedation standards to be in accordance with national standards, and also (as authorized by 2018 H.B. 200) allows all five of the regional dental clinical licensure examinations to meet Utah licensing requirements, so that a student who has taken any one of the five regional dental clinical exams may now become licensed to practice in Utah.</p>
2021	
Statutory Changes	SB 27 : Expands the scope of practice for physician assistants and reduces their reliance on physicians in order to perform to their expertise and training.
	SB 28 : Enables physician assistants to specialize in mental health care and defines how they can qualify.
	SB 177 : This bill reduces the permitted onerous regulations that pharmacy benefit managers may assert over pharmacies when performing audits.
	HB 178 : Enables pharmacists to dispense without prescription many more substances that are not considered risky, but have the potential to simplify access to many patients.
	SB 87 : Exempts from cosmetology regulations the practice of blow-dry and styling salons. Their regulation will be limited to a two-hour hair-styling permit fashioned after the food-handlers' permit.
	HB 126 : Exempts from cosmetology regulation the use of wefts.
	HB 353 : Exempts from the barber theory exam those who have achieved an internship and who pass the practice exam.
	SB 149 : Exempts from the practice of massage therapy the practice of brain integration therapy.
	HB 287 : Simplifies the requirements that a nurse practitioner must meet before prescribing a Schedule II controlled substance.
	SB 76 : Provides access to the Controlled Substance Database to the Utah Medicaid Fraud Control Unit.
	HB 85 : Provides access to the Controlled Substance Database to a managed care organization under certain circumstances.
SB 97 : Further enhances the charitable prescription drug recycling program by allowing the prescriptions to be transferred and by expanding the population that can access the program.	
SB 214 : Enables state agencies to do business in languages other than English.	
Rule Amendments	<p>Professional Geologist R156-76 OAR 53315: Increases opportunities for licensure by:</p> <ul style="list-style-type: none"> • providing a more expedited licensure by endorsement pathway for some applicants - the Division may waive both the ASOBG FG and the ASBOG

	<p>PG exams for certain applicants who have been licensed for 10 years in another jurisdiction prior to application (instead of 20 years), and deletes their jurisdictional predecessor exam requirement</p> <ul style="list-style-type: none"> • allowing applicants to register for their ASBOG FG Exam when they are enrolled in the final semester of their approved education program (not just after they have completed their education requirements)
	<p>Funeral Service Intern (for Funeral Service Director licensure) R156-1 OAR 53292: Allows a funeral service intern to extend their license up to two years upon evidence satisfactory to the Division of reasonable progress towards licensure and of a circumstance of hardship beyond the control of the licensee that prevented completion of the licensure process.</p>
	<p>Acupuncturist R156-72 OAR 53287: Clarifies that the 50 hours of on the job training to engage in animal acupuncture may be under the "indirect" (not direct) supervision of a licensed veterinarian, and reduces the retention requirement for patient records from 10 years to 7 years.</p>
	<p>Hunting Guide or Outfitter R156-79 OAR 53288: Designates certain unprofessional conduct proceedings as "informal" under the APA - reduces procedures and paperwork for registrants as well as Division, as those who have not already ceased business typically come into compliance shortly after notice.</p>
	<p>Pharmacy Intern & Pharmacist R156-17b OAR 53294: Expands opportunities to practice and for pharmacy interns to gain required experience by streamlining operating standards for pharmacist preceptors who supervise pharmacy interns, and allowing pharmacist preceptors to provide indirect (rather than direct) supervision of pharmacy interns.</p>

Division of Real Estate

The Division of Real Estate works to protect the public and promote responsible business practices of real estate, mortgage, and appraisal professionals. In recent years, many of the division's efforts have focused on streamlining processes to be more tightly tailored, focusing on reducing potential for harm to the public while removing bureaucratic red-tape. Changes have included modification to the division's use of past criminal convictions for licensing decisions, the addition of multiple alternative pathways to obtain the experience and education needed for licensure, and modifications to scopes of practice and definitions to better fit the changes in the market. Changes from the last several years are detailed in the table below.

2015	
Statutory Changes	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> • Allowed for a referral fee and incentive program that was consistent with Real Estate Settlement Procedures Act • Added an exemption for a community development financial institution • Allowed for a Principal Lending Manager to simultaneously oversee both a non-originating entity location and an originating branch office • Removed licensing requirements to order or hold a title insurance policy <p><u>Real Estate</u></p> <ul style="list-style-type: none"> • Clarified that a salaried employee for a property management company or real estate brokerage is exempt from licensing if they perform support services as outlined in rule

	<ul style="list-style-type: none"> Clarified licensing exemptions for an owner of real estate <u>Timeshare Development</u> Changed requirement to collect a timeshare inspection fee until after the inspection has been completed Added the option for providing electronic versions of documents Clarified process for approval of exempt status if offering is essentially, non-commercial
Rule Amendments	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> Allowed for a third way for a loan originator to become a lending manager Allowed for an applicant for a lending manager license to request approval from the Division to take pre-licensing education prior to verifying the applicant’s experience if verifying the experience could affect the applicant’s current employment status <p><u>Real Estate</u></p> <ul style="list-style-type: none"> Add “water law, rights and transfer” to the list of continuing education core topics allowing for more qualified continuing education topics <p><u>Appraisal</u></p> <ul style="list-style-type: none"> Allowed for 50% of an applicant’s experience to be acquired without a traditional client
2016	
Statutory Changes	<p><u>General Changes</u></p> <ul style="list-style-type: none"> Citation authority for specific violations, which is a less severe penalty <p><u>Mortgage</u></p> <ul style="list-style-type: none"> Allow for a lending manager license to be reduced to a loan originator license <p><u>Appraisal</u></p> <ul style="list-style-type: none"> Allowed a way for appraisers to assist in tax appeals <p><u>Real Estate</u></p> <ul style="list-style-type: none"> Allowed for a person with a power of attorney to manage property for another person
Rule Amendments	<p><u>Real Estate</u></p> <ul style="list-style-type: none"> Allowed for an inducement and closing gift to real estate clients Added “Fair Housing” to the list of continuing education core topics allowing for more qualified continuing education topics
2017	
Statutory Changes	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> Adopted the Uniform State Test, reducing barriers for entry <p><u>Real Estate</u></p> <ul style="list-style-type: none"> Allow a broker to simultaneously supervise up to three locations Allow a sales agent working for a property management company to perform sales in certain circumstances Require a licensee to reimburse the Division for the cost of a trust account audit only after the Commission finds that gross mismanagement, comingling, or misuse occurred. The statute originally said they had to pay upfront

Rule Amendments	<p><u>Real Estate</u></p> <ul style="list-style-type: none"> • Eliminated the font size requirements in advertising in favor of a requirement that the brokerage name be identified in a clear and conspicuous manner • Allowed for and established specific advertising rules for electronic and social media advertising • Allowed an associate broker or sales agent affiliated with a dual broker through a property management company to simultaneously provide both property management and real estate sales services • Allowed a principal broker to designate certain supervisory responsibilities to a branch broker • Included a branch broker from the exclusion of accountability already provided to a principal broker for violations of an affiliated sales agent when certain requirements are met <p><u>Appraisal</u></p> <ul style="list-style-type: none"> • Allow for a state licensed appraiser who qualifies for certification within six months of renewing the license to only pay the difference between the renewal fee and the license application fee, instead of the whole application fee • Reduced the number of supervisor accompanied interior inspections for a trainee from 100 to 35 • Allowed a professional education organization to register as a special event provider and bring in experts in the appraisal field without having each expert apply as an instructor
2018	
Rule Amendments	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> • Allowed for a mortgage loan originator seeking to become a lending manager to obtain experience points by working as a junior loan officer or assistant loan officer
2019	
Statutory Changes	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> • Allow for a loan originator coming from another state or a bank to have temporary authority to act as a loan originator for 120 days <p><u>Appraisal</u></p> <ul style="list-style-type: none"> • Allow for an appraiser to perform an evaluation while still complying with some aspects of USPAP
Rule Amendments	<p><u>Real Estate</u></p> <ul style="list-style-type: none"> • Allowed for a student to obtain credit for completing an online course even if the course is not completed within one year of the date the student registered for the course <p><u>Appraisal</u></p> <ul style="list-style-type: none"> • Allowed for an appraiser to be exempted from USPAP standards 1-3 (later changed to 1-4) when performing an evaluation <p><u>Timeshare Development</u></p> <ul style="list-style-type: none"> • Extended the window of opportunity for a timeshare developer to reinstate an expired project registration from 30 calendar days to 90 calendar days

2020	
Statutory Changes	<p><u>General Changes</u></p> <ul style="list-style-type: none"> Removed reference to crimes of moral turpitude and clarified specific crimes that would affect licensing <p><u>Subdivision</u></p> <ul style="list-style-type: none"> Standardized exemption fees, and renewal fees, which included lowering some fees and simplified the process Required an onsite inspection only if the Division determined it was necessary <p><u>Mortgage</u></p> <ul style="list-style-type: none"> Adopted RESPA Section 8 concerning referral fees. Our prohibition against referral fees was stricter than federal law <p><u>Real Estate</u></p> <ul style="list-style-type: none"> Removed requirement for a broker to keep a license copy for all licensees affiliated with their brokerage Reduced statute of limitations for certain violations from 10 years to four years
Rule Amendments	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> Eliminated the requirement that a lending manager review each complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff <p><u>Real Estate</u></p> <ul style="list-style-type: none"> Eliminated the mandatory denial of an application for licensure of a person who entered into a felony plea agreement within five years of the date of application Allowed a principal broker to establish a trust account or escrow account. Reduced statute of limitations for certain violations from 10 years to four years Increased the amount of a broker's own funds that can be held in a real estate trust account from \$500 to \$1,000
2021	
Statutory Changes	<p><u>Mortgage</u></p> <ul style="list-style-type: none"> Eliminated the requirement that a lending manager review each complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff <p><u>Real Estate</u></p> <ul style="list-style-type: none"> Eliminated the mandatory denial of an application for licensure of a person who entered into a felony plea agreement within five years of the date of application Allowed a principal broker to establish a trust account or escrow account. Reduced statute of limitations for certain violations from 10 years to four years Increased the amount of a broker's own funds that can be held in a real estate trust account from \$500 to \$1,000

Division of Securities

Despite the many challenges of the past year in particular, the securities industry is thriving in Utah. Fidelity Investments, Morgan Stanley, and Goldman Sachs all have large employment bases in our state. The division is grateful for an opportunity to address the current state of securities regulation in Utah as we all face the challenges that lie ahead. The division will continue to educate the public – and steer them away from “easy money” opportunities so often rife with fraud – and help guide our licensees as they carry out their professional obligations. Recent reform efforts that support this mission have included:

- Rule R164-4-9. Exemptions from Licensure for Certain Investment Advisers. In promulgating this rule, the division met with stakeholders in the Utah VC community and members of the Securities Section of the Utah State Bar to design a rule to remove barriers for VC activities and for investment advisers to institutional investors. Utah's was one of the first such rules before the SEC rule and a NASAA model rule. The division currently is in the process of recrafting the rule, working with industry stakeholders and the Securities Section to modernize it and incorporate other beneficial exemptions, including those added in the NASAA model rule.
- No-Action relief. For a nominal \$120 fee, the division routinely works with members of the business community and securities industry and their legal counsel to grant "no-action" relief from the requirements of the Act under appropriate circumstances. After reviewing plans for proposed activities, when the division grants no-action relief, a requesting party saves significant startup business costs, ongoing compliance costs and recordkeeping requirements. One example that is particularly beneficial for Utah state employees involves investment adviser (“IA”) licensing relief granted to Utah Retirement Systems (“URS”). Pursuant to no-action relief, URS representatives can offer free one-on-one meetings for any state employees to discuss investment options and planning for retirement.¹² More recently, the division plans to memorialize the relief granted in a different no-action letter (that also exempts IA licensure) by incorporating it into a rule being amended. Finally, the division is in the process of finalizing no-action relief for an Arizona investment adviser temporarily relocating to Utah to take care of an ailing family member without having to license in Utah.
- Recently the division increased the hourly rate investment advisers may charge to adapt to changes in the industry from \$150 to \$200. This change helps keep Utah competitive with other states and encourages advisers from larger states where higher fees are typically charged to do business here. At least one firm has already done so based on the fee increase.
- H.B. 335. The division worked with the Legislature in its most recent session to waive the filing fee for Regulation D securities offerings of less than \$500,000. This helps smaller businesses raise funds by reducing their costs in Utah.
- 61-1-32. Legislation passed in the 2018 session exempts certain members serving in the military from licensing under certain circumstances.
- 2020 Statutory amendments clarified what conduct constitutes a person holding themselves out to the public as an investment adviser.

Other items under division consideration:

Continuing Education (“CE”) requirements for investment adviser representatives. In November 2020, NASAA adopted a model rule concerning continuing education (“CE”) requirements for

¹² <https://securities.utah.gov/no-actions/B01286675.pdf>

investment adviser representatives (“IARs”).¹³ Utah has no CE requirements for IARs at this time. As fiduciaries operating in an ever-evolving market with ever-changing and often complex investment products, there is a compelling argument that in order to continue to provide advice in the best interest of clients that investment advisers and their representatives meet certain minimal standards in connection with their professional licenses. The division notes that broker-dealer firms and their agents, who are not fiduciaries, are subject to annual continuing education requirements. The division continues its dialogue with NASAA and other states, with an eye towards ease of implementation of any such requirements and minimizing costs for licensees. It is likely that CE will be made available through the national Central Registration Depository (“CRD”) system, to which all securities firms and representatives already have access.

¹³ [https://www.nasaa.org/56254/nasaa-members-adopt-model-rule-to-require-continuing-education-by-investment-adviser-representatives/#:~:text=NASAA%20Members%20Adopt%20Model%20Rule%20to%20Require%20Continuing%20Education%20by%20Investment%20Adviser%20Representatives,-WASHINGTON%2C%20D.C.%20\(November&text=The%20model%20rule%20will%20help,hours%20of%20continuing%20education%20annually.](https://www.nasaa.org/56254/nasaa-members-adopt-model-rule-to-require-continuing-education-by-investment-adviser-representatives/#:~:text=NASAA%20Members%20Adopt%20Model%20Rule%20to%20Require%20Continuing%20Education%20by%20Investment%20Adviser%20Representatives,-WASHINGTON%2C%20D.C.%20(November&text=The%20model%20rule%20will%20help,hours%20of%20continuing%20education%20annually.)