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Title 58 Chapter 07-11: Dentists to Hairdressers - 1953

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department of registration within ten days thereafter, an abstract of said judgment of suspension or cancellation, as the case may be, upon such form as the department of registration shall prescribe.

History: L. 1933, ch. 58, § 7; C. 1943, Collateral References.
79-5a-7.

Licenses↔38.
53 C.J.S. Licenses § 44.

58-6-8. Renewal after suspension, conditions precedent.—After suspension of the license, the department of registration shall renew the same upon proof of the compliance by the contractor with any provisions of the judgment as to renewal of such license. After cancellation of a license such license shall not be renewed or reissued within a period of one year after final determination of cancellation and then only on proper showing that all loss caused by the act or omission for which the license was cancelled has been fully satisfied.

History: L. 1933, ch. 58, § 8; C. 1943, Collateral References.
79-5a-8.

Licenses↔38.
53 C.J.S. Licenses § 44.

58-6-9. License nontransferable.—The license issued under this act shall be nontransferable and shall be exhibited by the licensee upon demand.

History: L. 1933, ch. 58, § 9; C. 1943, Collateral References.
79-5a-9.

Licenses↔37.
53 C.J.S. Licenses § 45.

58-6-10. Violation of act—Penalty.—Any person, firm, copartnership, corporation, association, or other organization, acting in the capacity of contractor within the meaning of this act, without a license as herein provided, shall upon conviction thereof, if a person, be punished by a fine of not to exceed five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a copartnership, or to any construction managing or directing officer of any organization consenting to, participating in, or aiding or abetting, any such violation of this act.

History: L. 1933, ch. 58, § 10; C. 1943,
79-5a-10.

unlicensed contractor to perform services falling within the field of his trade shall be unenforceable. But the statutory requirement to obtain a license before engaging in the trade is a police regulation for the protection of the public. *Dow v. United States*, 154 F. 2d 707, 710, construing this section.

Effective Date.

Section 11 of Laws 1933, ch. 58 (Code 1943, 79-5a-11) provided that the act should take effect upon approval. Approved March 21, 1933.

1. Operation and effect of section.

Neither this nor any other section of the Utah statutes provides in express language that a contract employing an

Collateral References.

Licenses↔25.
53 C.J.S. Licenses § 35.

CHAPTER 7

DENTISTS

- Section 58-7-1. Qualifications.
58-7-2. Requirements from applicants.
58-7-3. On change of residence—Certificate of attainments.

- 58-7-4. License to be displayed—Penalty.
- 58-7-5. Right to administer anaesthetics.
- 58-7-6. "Practicing dentistry" defined.
- 58-7-7. "Unprofessional conduct" defined.
- 58-7-8. Penalties.

58-7-1. Qualifications.—Any resident of the state twenty-one years old who possesses the necessary qualifications of learning and ability may apply for a license to practice dentistry.

History: L. 1909, ch. 38, § 10; 1917, ch. 104, § 1; C. L. 1917, § 2024; L. 1921, ch. 46, § 1; R. S. 1933 & C. 1943, 79-6-1.

Comparable Provisions.

Deering's Cal. Bus. and Prof. Code, § 1628 (eligibility to take examination for license to practice dentistry: over 21 years of age; not having three times previously failed examinations of the board; good moral character).

Idaho Code 1947, § 54-902 (requiring license in order to practice dentistry); § 54-906 (applicant must be citizen of United States, at least 21 years of age and of good moral character and reputation).

Iowa Code 1950, § 153.3 (stating requirements of applicant for license to practice dentistry; state department of health, with approval of dental examiners, may accept in lieu of required diploma and passing of examination, a certificate of satisfactory examination issued by national board of dental examiners).

Montana Rev. Codes 1947, § 66-901 (state board of dental examiners); § 66-905 (requiring filing of application for examination with state board).

Cross-Reference.

Committee for dentists, 58-1-5, subd. (6).

Decisions from other Jurisdictions.

— **California.**

The practice of dentistry comes as legitimately within the powers of the legislature as does the practice of medicine, or any other of the professions which require special scientific

knowledge on the part of the practitioner. *Painless Parker v. Board of Dental Examiners*, 216 Cal. 285, 14 P. 2d 67.

— **Idaho.**

The right to practice dentistry, like the right to practice any other profession, is a valuable personal right, in which, under the Constitution and the laws of Idaho, one is entitled to be protected and secured. *Abrams v. Jones*, 35 Idaho 532, 207 P. 724.

— **Iowa.**

Corporation cannot bring itself within provisions of law for practicing dentistry. *State v. Bailey Dental Co.*, 211 Iowa 781, 234 N. W. 260.

Possession of a certificate to practice the profession of dentistry is a valuable right which cannot be taken away from the possessor without due process of law. *Craven v. Bierring*, 222 Iowa 613, 269 N. W. 801.

State's police power extends to statutory regulation of practice of medicine and dentistry. *Craven v. Bierring*, 222 Iowa 613, 269 N. W. 801.

Collateral References.

Physicians and Surgeons—5(2).

70 C.J.S. Physicians and Surgeons § 12.

Power of state, 41 Am. Jur. 138, Physicians and Surgeons § 8 et seq.

Dentist as physician or surgeon within statutes, 115 A. L. R. 261.

Duty and liability of dentist to patient, 129 A. L. R. 101.

58-7-2. Requirements from applicants.—Every applicant for a license to practice dentistry must:

- (1) Produce satisfactory evidence of good moral character.
- (2) Be a graduate of a high school or similar institution of learning accredited by the University of Utah or other university of equal standing, or have an academic education the equivalent thereof; and be a graduate of a reputable dental college recognized by the department of registration.
- (3) Pass a satisfactory examination consisting of practical demonstrations and written or oral tests, or both, in the theory and practice of the science of dentistry, as required by the department of registration.

History: L. 1909, ch. 38, § 10; 1917, ch. 104, § 1; C. L. 1917, § 2024; L. 1921, ch. 46, § 1; R. S. 1933, 79-6-2; L. 1935, ch. 78, § 1; C. 1943, 79-6-2.

Compiler's Note.

The 1935 amendment deleted a part of subd. (2) and added clause to subd. (3).

Collateral References.

Physicians and Surgeons↔5(2).
70 C.J.S. Physicians and Surgeons § 12.

58-7-3. On change of residence—Certificate of attainments.—Any dentist in the legal practice of dentistry in this state for five years or more who desires to change his residence into another state, territory or district of the United States may apply to the department of registration for, and said department may grant to him a certificate attesting his moral character and professional attainments.

History: L. 1909, ch. 38, § 15; C. L. 1917, § 2029; L. 1921, ch. 46, § 1; R. S. 1933, 79-6-4; L. 1935, ch. 78, § 1; C. 1943, 79-6-4.

Former section 79-6-3 (R. S. 1933), was repealed by Laws 1935, ch. 78, § 2.

Compiler's Notes.

The 1935 amendment made no change in text.

Collateral References.

Physicians and Surgeons↔5(2).
70 C.J.S. Physicians and Surgeons § 13.

58-7-4. License to be displayed—Penalty.—Every person who receives a license to practice dentistry from the department of registration shall cause the original license or a certified copy thereof to be conspicuously displayed in his office or place of business. Such license shall be forfeited for any violation of the provisions of this section and shall not be reissued except upon payment to the department of the sum of \$25.

History: L. 1909, ch. 38, § 16; C. L. 1917, § 2030; L. 1921, ch. 46, § 1; R. S. 1933, 79-6-5; L. 1935, ch. 78, § 1; C. 1943, 79-6-5.

Collateral References.

Physicians and Surgeons↔5(4).
70 C.J.S. Physicians and Surgeons § 15.

Compiler's Note.

The 1935 amendment made no change in text.

58-7-5. Right to administer anaesthetics.—A licensed dentist shall have the right to administer general and local anaesthetics and to prescribe drugs or medicines necessary or proper in the practice of his profession.

History: L. 1909, ch. 38, § 22; 1917, ch. 104, § 1; C. L. 1917, § 2036; L. 1921, ch. 46, § 1; R. S. 1933, 79-6-6; L. 1935, ch. 78, § 1; C. 1943, 79-6-6.

Collateral References.

Physicians and Surgeons↔5(4).
70 C.J.S. Physicians and Surgeons § 15.

Compiler's Note.

The 1935 amendment made no change in text.

58-7-6. "Practicing dentistry" defined.—Any person shall be held to be practicing dentistry, within the meaning of this title, who shall (1) by card, sign, circular, pamphlet, newspaper, or in any other way, advertise himself as a dentist; or (2) who shall offer or undertake by any means or method to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws, or to supply artificial teeth as substitutes for natural teeth, or to take impressions of the teeth or jaws, or to remove stains or concretions from teeth or attempts to correct malpositions thereof;

or (3) who shall in any way indicate that he will, by himself or his agents or servants, undertake by any means or method to diagnose, treat, operate or prescribe for the same, or to supply artificial teeth as substitutes for natural teeth, or to take impressions of the teeth or jaws, or to remove stains or concretions from teeth or attempt to correct malpositions thereof; or (4) who manages, or conducts as manager, proprietor, operator or otherwise, a place where dental operations are performed, or who shall use the words Doctor of Dental Surgery, Dental Surgeon, D. D. S., D. M. D. or the terms Mechanical Dentist, Prosthetist, or Prosthetic Dentist or Dental Technician, or the use of the word Dentist in English or any foreign language or in any way in connection with his name or any other title intended to imply or designate him as a practitioner of dentistry. But nothing in this title shall prohibit an unlicensed person from performing merely mechanical work upon inert matter in a dental office or laboratory; under the authorization and responsibility of a licensed and registered dentist or a duly licensed physician or surgeon from treating diseases of the mouth or performing operations in oral surgery, unless he undertakes to reproduce or reproduces lost parts of the human teeth in the mouth, or to restore or replace in the human mouth lost or missing teeth or corrects malpositions thereof; or a dental surgeon of the United States Army or Navy or the United States Public Health Service or the United States Veterans Bureau from practicing dentistry in the performance of his duties; or a legal practitioner of dentistry of another state from making clinical demonstrations before a dental society, convention, association of dentists or in a dental college in this state.

History: L. 1909, ch. 38, § 9; C. L. 1917, § 2023; R. S. 1933, 79-6-7; L. 1935, ch. 78, § 1; C. 1943, 79-6-7.

changes and inserted matter throughout text.

Collateral References.

Physicians and Surgeons 5(2).
70 C.J.S. Physicians and Surgeons § 1.

Compiler's Note.

The 1935 amendment made material

58-7-7. "Unprofessional conduct" defined.—The words "unprofessional conduct" as relating to dentists are hereby defined to include:

(1) Obtaining any fee by fraud or misrepresentation.
(2) Employing directly or indirectly any student or unlicensed dentists or one whose license has been revoked or suspended to perform operations of any kind or to treat lesions of the human teeth, gums or jaws, or take impressions of the teeth or jaws, or to correct or attempt to correct malpositions thereof, except as herein provided.

(3) Employing what are known as cappers or steerers, touters or lecturers to obtain business.

(4) Communicating, without the consent of the patient, information acquired in treating a patient necessary to enable him to act for such a patient.

(5) Advertising his dental business or treatment or devices by untruthful, improbable or impossible statements, or advertising in any manner his products or the price or charge to be made, or the character or durability of his works or products or anything identical to any of the foregoing, whether by means of circular, card, sign poster, advertis-

ing matches, mirrors, or other articles, or by advertisements in the newspapers, magazines, or other publications or by projections by means of light, either colored, flickering, or intermittent, or by crier or radio broadcasting, or by use of advertising solicitors or publicity agents, or has permitted the use of his name as a dentist by others in the sale or advertisement of his products.

Provided, that a dentist may use personal professional cards of a modest type announcing his name, title, address, telephone number, and office hours; and if he limits his practice to a specialty, he may announce it, and such information may be inserted in public print when not more than one column in width and two inches in depth; or announce his change of place of business, entrance into, absence from or return to business in the same manner, or issue appointment cards to his patients when the information thereon is limited to matter pertaining to the time and place of appointment, and that permitted on the professional card, or display the name of the licensee by means of a modest sign at the residence of the dentist or on the premises where he is engaged in his profession or upon the windows thereof, or by a door plate or name or building directory when the information is limited to that permitted on the professional card; provided, that the name and title of the registrant shall not be displayed in lettering larger than six inches.

(6) Advertising in any manner the use of any anaesthetic, drug, formula, material, medicine, method or system, or advertising to perform painless operations of a dental or surgical nature.

(7) Making any misrepresentations or false promises directly or indirectly to influence, persuade or induce dental patronage.

(8) Giving a public demonstration of any dental operation or displaying as an advertisement any representation of a tooth or teeth, plates, crowns, bridges, or other dental restorations.

(9) Soliciting patronage by public appeal in person or by employees or agents.

(10) Sharing professional fees with an unlicensed person or paying any person for sending or referring patients.

(11) Making public claim of superiority, in training or skill as a dentist, or in the performance of professional services.

(12) Making public claim of lower charges for professional services than is charged by other dentists.

(13) Practicing while his license is suspended.

(14) Using intoxicants or drugs to such an extent as to render him unfit to practice dentistry.

(15) Maltreating his patients by reason of gross ignorance, wilfulness or neglect.

(16) Gross immorality, dishonorable or improper conduct, or conviction of a felony.

(17) Violating or aiding others in violating any of the provisions of the Dental Practice Act.

(18) Refusing the department of registration or the state board of health, their officers or employees access to his office, instruments, labora-

tory, equipment, appliances or supplies for the purpose of inspecting the same.

(19) Keeping his office, instruments, laboratory, equipment, appliances or supplies in an insanitary condition.

History: L. 1909, ch. 38, § 18; 1917, ch. 104, § 1; C. L. 1917, § 2032; L. 1921, ch. 46, § 1; R. S. 1933, 79-6-8; L. 1935, ch. 78, § 1; C. 1943, 79-6-8.

Compiler's Note.

The 1935 amendment made material changes throughout text, and added subds. (6) to (19).

Cross-Reference.

Health regulations, 26-1-20 to 26-1-23.

Collateral References.

Physicians and Surgeons ⇐ 5(2).

70 C.J.S. Physicians and Surgeons § 1.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon, or other person professing healing arts, 54 A. L. R. 400.

Practice of medicine, dentistry or law through radio broadcasting stations, newspapers or magazines, 114 A. L. R. 1506.

Right of corporation or individual, not himself licensed, to practice medicine, surgery or dentistry through licensed employees, 103 A. L. R. 1240.

58-7-8. Penalties.—Every person is guilty of a misdemeanor, who:

(1) Practices dentistry under a false or assumed name, or under the name of a corporation, company, association, parlor or trade name, or under any name except his own proper name, which shall be the name used in his license as issued by the department of registration; provided, that nothing herein contained shall prohibit a partnership under a firm name containing nothing but the true name of every member of said partnership; and provided further, that nothing herein contained shall prohibit a licensed dentist from practicing dentistry as the employee of a licensed dentist practicing under his own name or under a firm name containing only the true name of each member of such firm;

(2) Falsely represents himself to be a graduate of any dental college;

(3) With others practices dentistry without causing to be displayed and kept in a conspicuous manner and place at the entrance of his place of business his own name and the name of every person employed therein in the practice of dentistry;

(4) Fails to furnish the department of registration within ten days after demand the name and address of every person practicing or assisting the practice of dentistry in his office at any time within sixty days prior to said demand, together with a sworn statement showing under and by what license or authority said person or employee has been practicing dentistry; provided, said statement shall not be used as evidence against the person making the same in any prosecution for the violation of any of the provisions of this section;

(5) Impersonates another at any examination held by the department of registration; or

(6) Procures a license with intent that it shall be used as evidence of the right to practice dentistry by a person other than the one to whom such license is issued.

History: L. 1909, ch. 38, § 20; C. L. 1917, § 2034; L. 1921, ch. 46, § 1; R. S. 1933, 79-6-9; L. 1935, ch. 78, § 1; C. 1943, 79-6-9.

Compiler's Note.

The 1935 amendment added the clause

after "name" in first line of subd. (1) and deleted matter from subds. (3) and (4).

Collateral References.

Physicians and Surgeons 15(19).
70 C.J.S. Physicians and Surgeons § 48.

CHAPTER 8

DENTAL HYGIENISTS' ACT

- Section 58-8-1. Short title—Purpose and liberal construction of act.
58-8-2. License to practice dental hygiene—General requirements and qualifications.
58-8-3. Application, requirements and qualifications—Submission of proof—Endorsement of licensed dentists—Photograph and signature—Examination.
58-8-4. Administration of act—Department of registration.
58-8-5. Board of examiners—Representative committee for dentists as—Meetings for examination of applicants—Record of licensees—Rules and regulations.
58-8-6. License to practice dental hygiene—Filing of application for examination and credentials—Approval—Fee—Examination—Certification—Issuance of license—Registration.
58-8-7. Conditions under which licensee may practice—Teaching dental hygiene.
58-8-8. Dentist—Limitation of one licensed dental hygienist.
58-8-9. Practicing dental hygiene—What constitutes—Suspension, revocation or reinstatement of dentist's license or dental hygienist's certificate of registration—Procedure.
58-8-10. Penalty for practicing dental hygiene without license or for violation of act—Misdemeanor.
58-8-11. Annual registration fee—Furnishing information—Suspension or revocation of license for noncompliance—Reinstatement—Display and duration of license—Additional grounds for revocation.
58-8-12. Suspension or revocation of license—Additional grounds for—Reinstatement—Procedure—Hearing—Filing forged or false diploma, license, affidavit or qualification as misdemeanor.

58-8-1. Short title—Purpose and liberal construction of act.—This act shall be known as the "Dental Hygienists' Act of the State of Utah." It shall be deemed passed in the interests of public health, safety and welfare, and its provisions shall be liberally construed to carry out its intent, objects and purposes.

History: L. 1949, ch. 28, § 1; C. 1943, Supp., 79-6a-1.

Title of Act.

An act defining and providing for the licensing and registration of dental hygienists and for the renewal, revocation and suspension of such licenses and registrations; providing for appeals and for reinstatements thereof, fixing fees therefor, defining the powers and duties of the board of examiners thereof and the de-

partment of registration with respect thereto and fixing penalties for violations thereof.

Collateral References.

Health 31.
39 C.J.S. Health § 25.

Constitutionality, construction, and application of statute relating to dental hygienists, 11 A. L. R. 2d 724.

58-8-2. License to practice dental hygiene—General requirements and qualifications.—Any female person of good moral character, nineteen years of age or over, meeting the general and educational requirements herein after set forth and recognized by the department of registration of the state of Utah and who shall have successfully passed an examination given

by the state board of dental examiners shall be licensed to practice dental hygiene within the meaning of this act.

History: L. 1949, ch. 28, § 2; C. 1943, Collateral References.
Supp., 79-6a-2.

Health↔31.
39 C.J.S. Health § 25.

58-8-3. Application, requirements and qualifications—Submission of proof—Endorsement of licensed dentists—Photograph and signature—Examination.—Every applicant for a license to practice dental hygiene as herein defined must:

(A) Produce satisfactory evidence of good moral character.

(B) Produce satisfactory evidence that she is nineteen years of age or over.

(C) Be a female person.

(D) Be a citizen of the United States of America.

(E) Furnish the written endorsement of two dentists licensed to practice in the state of Utah and in good standing attesting to her moral character, standing and ability, provided such dentists shall not be connected in any manner with any school of dental hygiene or be related to the applicant.

(F) Furnish with her application for examination an unmounted recent photograph of herself, as required by the board. On the reverse side of such photograph the applicant shall sign her name and give her address, sworn to before a notary public, who over his seal shall certify to the identity of the photograph and genuineness of the signature.

(G) Be a graduate of a school of dental hygienists that is recognized by the department of registration of the state of Utah.

(H) Pass a satisfactory examination under the rules and regulations of the department of registration on the subjects considered essential by it for a dental hygienist.

History: L. 1949, ch. 28, § 3; C. 1943, Collateral References.
Supp., 79-6a-3.

Health↔31.
39 C.J.S. Health § 25.

58-8-4. Administration of act—Department of registration.—The department of registration of the state of Utah is hereby vested with power and authority and charged with the duty of administering the provisions of this act in like manner with the powers, authority and duties imposed upon it for other trades and professions under the provisions of Title 58, Utah Code Annotated 1953, as amended.

History: L. 1949, ch. 28, § 4; C. 1943, in Code 1943 as "Title 79, Utah Code Annotated 1943."
Supp., 79-6a-4.

Compiler's Note.

The reference in this section to "Title 58, Utah Code Annotated 1953" appeared

Collateral References.

Health↔31.
39 C.J.S. Health § 25.

58-8-5. Board of examiners—Representative committee for dentists as—Meetings for examination of applicants—Record of licensees—Rules and regulations.—The committee appointed by the department of registration for dentists, as provided by section 58-1-5, Utah Code Annotated 1953, shall constitute the board of examiners for dental hygienists. Such

committee shall meet as often and at such times and places as the department of registration shall require for the examination of applicants to practice dental hygiene in this state. The department of registration shall keep a separate record of the names, addresses and license numbers of all persons legally entitled to practice dental hygiene in this state. The department of registration may prescribe and enforce such rules and regulations as it may deem necessary and reasonable to carry out the provisions of this act.

History: L. 1949, ch. 28, § 5; C. 1943, Supp. 79-6a-5.

appeared in Code 1943 as "section 79-1-5, Utah Code Annotated 1943."

Compiler's Note.

The reference in this section to "section 58-1-5, Utah Code Annotated 1953" ap-

Collateral References.

Health↔31.
39 C.J.S. Health § 25.

58-8-6. License to practice dental hygiene—Filing of application for examination and credentials—Approval—Fee—Examination—Certification—Issuance of license—Registration.—Every applicant for examination hereunder shall submit with her application for examination her credentials, as herein required, all of which shall be filed with the department of registration at least thirty days prior to the examination date. Upon approval of the credentials and general qualifications of the applicant by the department of registration and upon payment by the applicant of the sum of fifteen dollars in advance of the examination, the applicant may be examined by the board of examiners, as hereinabove in section 58-8-5 provided. Such examination may in the discretion of the department of registration be conducted by a majority of the members of the board. Upon being certified by the board to it that the applicant has successfully passed said examination and met the requirements of the board, the department of registration shall forthwith issue a license to and register such person as a dental hygienist.

History: L. 1949, ch. 28, § 6; C. 1943, Supp., 76-6a-6.

Collateral References.

Health↔31.
39 C.J.S. Health § 25.

Compiler's Note.

The reference in this section to "section 58-8-5" appeared in Code 1943 as "Section 5."

58-8-7. Conditions under which licensee may practice—Teaching dental hygiene.—Upon being licensed and registered to practice dental hygiene within this state, the holder of such license may practice her profession under the following conditions only:

(A) In the office of a licensed dentist in good standing but at all times under his direction, supervision and responsibility.

(B) In a dental college or dental hygienist school to teach and demonstrate the practice of dental hygiene.

(C) Upon meeting all of the requirements of the department of education of the state of Utah, she may teach dental hygiene, including such health subjects as shall have been included in the scope of her training, and particularly the subjects referred to in subsections C, D, E, F and G of section 58-8-9 hereof, in the schools of the state of Utah.

History: L. 1949, ch. 28, § 7; C. 1943, Collateral References.
Supp., 79-6a-7. Health☞31.

Compiler's Note.

The reference in this section to "section 58-8-9" appeared in Code 1943 as "Section 9."

39 C.J.S. Health § 25.

58-8-8. Dentist—Limitation of one licensed dental hygienist.—No individual dentist may employ more than one licensed dental hygienist at any one time.

History: L. 1949, ch. 28, § 8; C. 1943, Collateral References.
Supp., 79-6a-8. Health☞31.

39 C.J.S. Health § 25.

58-8-9. Practicing dental hygiene—What constitutes—Suspension, revocation or reinstatement of dentist's license or dental hygienist's certificate of registration—Procedure.—Any person shall be deemed to be practicing dental hygiene within the meaning of this act who:

(A) Uses the title "Dental Hygienist" or the letters "D. H." in connection with her name, or

(B) Who holds herself out to the public in any manner whatsoever within the meaning of this act that she can, will or does render services as a dental hygienist; or

(C) Removes calcific deposits or accretions from the surfaces of human teeth outside of the line of normal attachment of the gum tissue, but not beyond; or

(D) Who cleans or polishes such teeth; or

(E) Makes instrumental examination of her patient's teeth; or

(F) Applies and uses within the patient's mouth such therapeutic agents as her employer dentist may direct; or

(G) Engages in any of the practices within the oral cavity that are included in the curricula of recognized schools of dental hygiene, provided, however, that each and all of the above practices are performed under the direction, supervision and responsibility of a legally licensed and practicing dentist within the state of Utah; and provided further that the dental hygienist shall not perform or undertake to perform any other dental operative procedure to the teeth or tissues of the human mouth.

The department of registration may suspend or revoke, with power to reinstate, the license of any dentist who shall permit any dental hygienist operating under his direction, supervision or responsibility to perform any operation other than that permitted under the provisions of this act; and it may also suspend or revoke, with power of reinstatement, the certificate of registration of any dental hygienist violating the provisions of this act, provided that the procedure for suspension, revocation or reinstatement of such license or registration shall be as prescribed in chapter 1, Title 58, Utah Code Annotated 1953.

History: L. 1949, ch. 28, § 9; C. 1943, appeared in Code 1943 as "chapter 1,
Supp., 79-6a-9. Title 79, Utah Code Annotated 1943."

Compiler's Note.

The reference in this section to "chapter 1, Title 58, Utah Code Annotated 1953"

Collateral References.

Health☞31.
39 C.J.S. Health § 25.

58-8-10. Penalty for practicing dental hygiene without license or for violation of act—Misdemeanor.—Any person who shall practice or hold herself out or offer to practice dental hygiene in this state within the meaning of this act without first having obtained a license from the department of registration therefor, or who violates any of the provisions of this act, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor.

History: L. 1949, ch. 28, § 10; C. 1943, Collateral References.
 Supp., 76-6a-10.

Health☞31.
 39 C.J.S. Health § 25.

58-8-11. Annual registration fee—Furnishing information—Suspension or revocation of license for noncompliance—Reinstatement—Display and duration of license—Additional grounds for revocation.—All dental hygienists practicing in this state shall on or before January 1 of each year pay to the department of registration a registration fee of two dollars and shall furnish such information as the department may require regarding their location and the name of the licensed dentist or dentists under whose supervision they practice. The license of any dental hygienist who neglects to pay the annual registration fee, as herein provided, or furnish the information herein required may be suspended or revoked by the department, but the department may in its discretion reinstate a delinquent licensee upon the payment of fee of five dollars. The license of a dental hygienist shall at all times be exhibited in a conspicuous place in the room in which such dental hygienist practices. All licenses to practice as a dental hygienist in the state of Utah shall remain in force until the annual license fee becomes due and thereafter so long as the licensee complies with the provisions of this act, but not otherwise; provided, however, that the department may, after hearing, revoke the license issued to any person under the provisions hereof for any of the following causes:

- (a) Physical or mental incompetency to practice her profession.
- (b) Fraud or misrepresentation in securing a license.
- (c) Gross immorality.
- (d) The habitual use of intoxicating liquor or drugs to such an extent as to render her unfit for practice.

History: L. 1949, ch. 28, § 11; C. 1943, Collateral References.
 Supp., 79-6a-11.

Health☞31.
 39 C.J.S. Health § 25.

58-8-12. Suspension or revocation of license—Additional grounds for—Reinstatement—Procedure—Hearing—Filing forged or false diploma, license, affidavit or qualification as misdemeanor.—The license of any dental hygienist performing any operation other than those permitted under the provisions of this act, or who is otherwise guilty of unprofessional conduct, as defined in chapter 7, Title 58, Utah Code Annotated 1953, may be suspended or revoked with power in the department of registration to reinstate the same. The procedure to be followed in the event of suspension, revocation or reinstatement of a license of a dental hygienist shall be as prescribed in chapter 1 of Title 58, Utah Code Annotated 1953.

The department of registration shall revoke or suspend the license of any registered and licensed dental hygienist who is found guilty of using or attempting to use in any manner whatsoever, any oral prophylaxis lists, call lists, records, reprints or copies of the same or information gathered therefrom, or the names of patients whom she might have served in the office of a prior employer, unless such names appear upon the bona fide call or oral prophylaxis list of her present employer and were caused so to appear through the legitimate practice of dentistry as provided for in this act. The department of registration shall also suspend or revoke the license of any licensed dentist who is found guilty of aiding or abetting or encouraging a dental hygienist employed by him to make use of a so-called oral prophylaxis call list, or the calling by telephone or by use of written letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist formerly employing such hygienist. No order of suspension or revocation provided in this section shall be made or entered except after hearing, as provided in 58-1-26, Utah Code Annotated 1953. Any person filing, or attempting to file, as her own, the diploma or license of another, or a forged or false affidavit or identification or qualification, shall be guilty of a misdemeanor.

History: L. 1949, ch. 28, § 12; C. 1943, Supp., 79-6a-12.

Compiler's Note.

The references in this section to "chapter 7, Title 58, Utah Code Annotated 1953," to "chapter 1 of Title 58, Utah Code Annotated 1953" and to "58-1-26, Utah Code Annotated 1953" appeared in Code

1943 as "Chapter 6, Title 79, Utah Code Annotated 1943," "Chapter 1 of Title 79, Utah Code Annotated 1943" and "79-1-26, Utah Code Annotated 1943" respectively.

Collateral References.

Health \Rightarrow 31.
39 C.J.S. Health § 25.

CHAPTER 9

EMBALMERS AND FUNERAL DIRECTORS

- Section 58-9-1. Qualifications.
- 58-9-2. Requirements from applicants.
- 58-9-3. Examinations—Scope of.
- 58-9-4. Grading and passing mark.
- 58-9-5. Apprentice—Requirements from applicants.
- 58-9-6. Practice by, limited—Reports.
- 58-9-7. Evidence of authority to be displayed.
- 58-9-8. Annual renewals.
- 58-9-9. "Practicing embalming" defined.
- 58-9-10. "Unprofessional conduct" defined.
- 58-9-11. Undertakers excepted.
- 58-9-12. Short title.
- 58-9-13. Policy of act.
- 58-9-14. Definitions.
- 58-9-15. General provisions governing.
- 58-9-16. Place of business—License.
- 58-9-17. Requirements from applicants.
- 58-9-18. License—Nontransferable—Registered with board of health.
- 58-9-19. Application for license—Examination of applicant.
- 58-9-20. License not a permit to practice embalming.
- 58-9-21. License to be displayed.
- 58-9-22. Unprofessional conduct.

58-9-1. Qualifications.—Any resident of the state twenty-one years old who possesses the necessary qualifications of learning and ability may apply for a license to practice embalming in this state.

History: L. 1921, ch. 55, § 5; 1923, ch. 17, § 1; 1927, ch. 7, § 1; R. S. 1933 & C. 1943, 79-7-1.

Comparable Provisions.

Deering's Cal. Bus. and Prof. Code, § 7643 (applicant must be over 21 years of age and of good character, to qualify for license as embalmer).

Idaho Code 1947, § 54-1101 (unlawful for any person to engage in business, or any part of business "of making final disposition of dead human bodies" without first obtaining license); § 54-1104 (applicant for license to practice embalming must have attained age of 21 years, and be of good moral character).

Iowa Code 1950, § 156.3 (stating requirements of applicant for license to practice embalming).

Montana Rev. Codes 1947, § 82-701 (creating state board of embalmers and funeral directors); § 82-703 (person desir-

ing to practice embalming must be 21 years of age; of good moral character); § 82-704 (idem as to person desiring to become funeral director).

Cross-Reference.

Committee for embalmers, 58-1-5, subd. (7).

Collateral References.

Licenses⇒11(1).

53 C.J.S. Licenses § 30.

Undertakers and embalmers, 54 Am. Jur. 507, Undertakers and Embalmers § 1 et seq.

Civil liability of undertaker for acts or omissions relating to corpse, 17 A. L. R. 2d 770.

Validity of statute, ordinance or other regulation in relation to undertakers or embalmers, 104 A. L. R. 402.

58-9-2. Requirements from applicants.—Every applicant for a license to practice embalming must:

(1) Produce satisfactory evidence of good moral character and temperate habits.

(2) Have been graduated from a high school approved by the department of registration or completed an equivalent course of study as determined by an examination conducted by the department.

(3) Have been graduated from a school of embalming which required as a prerequisite to graduation the completion of a course of study of at least nine months duration, and which is approved by the department of registration.

(4) Have studied embalming in this state under a licensed embalmer for at least two years and during such period have actually assisted in embalming at least fifty bodies under the supervision of a licensed embalmer of this state; provided, no credit shall be given for the study of embalming in this state under a licensed embalmer unless the applicant during the period of study was a registered apprentice embalmer in this state, and while so registered, complied with the provisions governing registered apprentice embalmers in this state.

(5) Have passed a satisfactory examination conducted under the rules and regulations of the department of registration.

History: L. 1921, ch. 55, § 5; 1923, ch. 17, § 1; 1927, ch. 7, § 1; R. S. 1933, 79-7-2; L. 1939, ch. 93, § 1; C. 1943, 79-7-2.

Compiler's Note.

The 1939 amendment made a minor

change in subd. (4) and added matter to the same subdivision.

Collateral References.

Licenses⇒20.

53 C.J.S. Licenses § 33.

58-9-3. Examinations—Scope of.—Examinations of applicants for licenses may include both practical demonstrations and written and oral

tests, and shall embrace the subjects of anatomy, sanitary science and the care, disinfection, preservation, embalming, transportation and burial of dead human bodies, and such other subjects as the department of registration may prescribe.

History: L. 1921, ch. 55, § 8; 1927, ch. 7, § 1; R. S. 1933 & C. 1943, 79-7-3.

Collateral References.
Licenses⇒22.
53 C.J.S. Licenses § 34.

58-9.4. Grading and passing mark.—The examination papers and oral answers shall be graded upon a scale of 100 per cent. The average rating required to pass shall be 75 per cent.

History: L. 1921, ch. 55, § 8; 1927, ch. 7, § 1; R. S. 1933 & C. 1943, 79-7-4.

Collateral References.
Licenses⇒22.
53 C.J.S. Licenses § 34.

58-9.5. Apprentice—Requirements from applicants.—Every applicant for a certificate as a registered apprentice must:

- (1) Be at least nineteen years old.
- (2) Produce satisfactory evidence of good moral character and temperate habits.
- (3) Have been graduated from a high school approved by the department of registration or completed an equivalent course of study as determined by an examination conducted by the department.
- (4) Have entered upon the study of embalming under the supervision of a licensed embalmer or indicated his intention of so doing.

History: L. 1921, ch. 55, § 6; 1927, ch. 7, § 1; R. S. 1933, 79-7-5; L. 1939, ch. 93, § 1; C. 1943, 79-7-5.

Collateral References.
Licenses⇒20.
53 C.J.S. Licenses § 33.

Compiler's Note.

The 1939 amendment made no changes in text.

58-9.6. Practice by, limited—Reports.—No registered apprentice may practice embalming in the state of Utah. He may however under the immediate personal supervision and in the actual presence of a licensed embalmer assist in the practice of embalming; provided, that when such apprentice has assisted in embalming fifty bodies as verified by his report to the department of registration such apprentice may then assist in embalming under the immediate personal supervision of a licensed embalmer who must be present during part of the actual embalming operation but without such licensed embalmer being actual present during the entire time. No person, corporation, partnership, association or other organization shall permit any registered apprentice embalmer, or other employee or agent or representative of such person, corporation, partnership, association or other organization, to violate any of the provisions of this section.

All apprentice embalmers registered as provided under this chapter shall be under the supervision and control of the department and committee and shall be required to report to the department semiannually on January 15th and July 15th upon forms provided by the department, showing the work which such apprentice has performed during the

semiannual period preceding the first of the month on which such report is made; including the number of bodies such apprentice has assisted in embalming or otherwise prepared for disposition during said period. The information contained in said report shall be certified as correct by the funeral director in whose establishment said apprentice has been employed during said period and also certified by the licensed embalmer under whom such apprentice is serving his apprenticeship.

History: L. 1921, ch. 55, § 4; R. S. 1933, 79-7-6; L. 1939, ch. 93, § 1; C. 1943, 79-7-6.

Compiler's Note.

The 1939 amendment made changes in text and added a proviso.

Cross-Reference.

Vital statistics, duties of undertakers, 26-4.

Collateral References.

Licenses ⇐ 36.
53 C.J.S. Licenses § 42.

58-9-7. Evidence of authority to be displayed.—Every holder of a license or certificate of registration shall display it in a conspicuous place in his principal office or place of business or employment.

History: L. 1921, ch. 55, § 10; R. S. 1933 & C. 1943, 79-7-7.

Collateral References.

Licenses ⇐ 25.
53 C.J.S. Licenses § 35.

58-9-8. Annual renewals.—Every license and certificate of registration shall be renewed on or before the first day of January of each year and the annual renewal fee paid therefor.

History: L. 1921, ch. 55, § 11; R. S. 1933 & C. 1943, 79-7-8.

Collateral References.

Licenses ⇐ 25.
53 C.J.S. Licenses § 35.

58-9-9. "Practicing embalming" defined.—Either the embalming of dead human bodies, or the preparation for transportation of human bodies dead of a contagious or infectious disease, constitutes the practice of embalming.

History: L. 1921, ch. 55, § 3; R. S. 1933 & C. 1943, 79-7-9.

Collateral References.

Licenses ⇐ 11(1).
53 C.J.S. Licenses § 30.

58-9-10. "Unprofessional conduct" defined.—The words "unprofessional conduct" as relating to embalming are hereby defined to include:

(1) Practicing in the profession for money or any other thing of value by fraudulent representation.

(2) Continuing to practice knowingly having an infectious or contagious disease.

(3) Habitual drunkenness or addiction to the use of narcotics.

(4) Failure to display the license or certificate of registration as herein provided.

(5) Failure of an apprentice embalmer to make and file a semiannual report with the department of registration as provided in this chapter.

(6) Violation of any provision of this chapter or violation of any rule or regulation of the department of registration.

(7) Solicitation of dead human bodies by a registered apprentice or licensed embalmer, or their agents, assistants or employees, whether such

solicitation occurs before or after death; provided, this provision shall not be deemed to prevent or prohibit general advertising.

(8) Employment, directly or indirectly, of any apprentice, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular mortuary establishment, funeral director or embalmer; provided, this provision shall not be deemed to prevent and prohibit the solicitation for the sale of crypts, burial lots or cremation services by a licensee or his employee.

(9) The buying of business by the licensee, his agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business; or the direct or indirect giving or offering to give any bonus, or gift for the purpose of securing business.

History: L. 1921, ch. 55, §§ 13, 20; R. S. 1933, 79-7-10; L. 1939, ch. 93, § 1; C. 1943, 79-7-10.

Collateral References.

Licenses⇒11(1).
53 C.J.S. Licenses § 30.

Compiler's Note.

The 1939 amendment added subds. (5) to (9).

58-9-11. Undertakers excepted.—This chapter shall not apply to undertakers or others conducting funerals or burying human bodies who neither practice nor attempt to practice embalming.

History: L. 1921, ch. 55, § 4; R. S. 1933 & C. 1943, 79-7-11.

Collateral References.

Licenses⇒11(1).
53 C.J.S. Licenses § 30.

58-9-12. Short title.—This act shall be known and may be cited as the "Funeral Directors' Act."

History: L. 1939, ch. 94, § 1; C. 1943, 79-7-12.

Title of Act.

An act defining funeral director, and funeral establishment; prescribing duties and qualifications and fixing rules and regulations thereof; providing for examinations and licenses; fixing fees and exceptions; defining unprofessional conduct; and providing for the administration hereof by the department of registration; and for other related purposes.

§ 7616 (defining "funeral establishment"); § 7617 (requiring that business of funeral director be conducted and engaged in at fixed place or establishment; and requiring license).

Collateral References.

Licenses⇒11(1).
53 C.J.S. Licenses § 30.

Implied authority of servant or agent to bind employer for services of undertaker or other funeral expenses, 29 A. L. R. 457.

Comparable Provision.

Deering's Cal. Bus. and Prof. Code, § 7615 (defining "funeral director");

Validity of statute, ordinance or other regulation in relation to undertakers or embalmers, 104 A. L. R. 402.

58-9-13. Policy of act.—This act shall be deemed an exercise of the police powers of the state for the protection of the public health, safety, morals, comfort and general welfare; to prevent the recurrence of abuses associated with the care of dead human bodies, their preparation and transportation, the location of the business and its equipment, sanitation, danger of infection, or contagion from disease, the obtaining of required

certificates and permits before acting, the orderly conduct of funerals and burials, and the like; and all provisions of this act shall be liberally construed for the attainment of these purposes.

History: L. 1939, ch. 94, § 2; C. 1943, 79-7-13.

Collateral References.
Licenses ⇨ 11(1).
53 C.J.S. Licenses § 30.

58-9-14. Definitions.—The following words and phrases used in this act shall have the following meaning, unless a different meaning clearly appears from the context:

“Funeral director” means and includes a person engaged in:

(a) Preparing for burial or disposal and directing and supervising the burial or disposal of dead human bodies, as a profession;

(b) Maintaining or employed in a funeral establishment devoted to the care and preparation for burial, transportation, or other disposition of dead human bodies; and

(c) Who shall, in connection with his name or funeral establishment, use the words “funeral director” or “undertaker” or “mortician” or any other title implying that he is engaged as a “funeral director” as herein defined.

“Director” shall mean the director of the department of registration of the state of Utah.

“Committee” shall mean the committee of funeral directors and embalmers examiners as provided in subparagraph 7 of section 58-1-5, Utah Code Annotated 1953, as amended.

“Funeral establishment” shall mean a place of business conducted at a specified street address or location, devoted to the care and preparation for burial, transportation or other disposition of dead human bodies and consisting of

(a) A chapel wherein funeral services may be held or conducted; provided, that in communities where ward chapels, churches or other public buildings are available and are being used for funeral services, that portion of this act requiring a chapel for funeral services may be omitted;

(b) A preparation room equipped with tile, cement, or inlaid linoleum floor, and containing necessary drainage and ventilation and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other final disposition.

History: L. 1939, ch. 94, § 3; C. 1943, 79-7-14.

peared in Code 1943 as “section 79-1-5 Revised Statutes of Utah, 1933.”

Compiler's Note.

The reference in this section to “section 58-1-5, Utah Code Annotated, 1953” ap-

Collateral References.

Licenses ⇨ 11(1).
53 C.J.S. Licenses § 30.

58-9-15. General provisions governing.—The general provisions of Title 58, chapter 1, Utah Code Annotated 1953, including the prohibitions and penalties thereof, shall be applicable to the administration and enforcement of this act, insofar as they are not in conflict herewith.

History: L. 1939, ch. 94, § 4; C. 1943, 79-7-15.

appeared in Code 1943 as "Title 79, Chapter 1, Revised Statutes of Utah, 1933."

Compiler's Note.

The reference in this section to "Title 58, chapter 1, Utah Code Annotated 1953"

Collateral References.

Licenses↔11(1).
53 C.J.S. Licenses § 30.

58-9-16. Place of business—License.—The business of a funeral director must be conducted and engaged in at a fixed place or establishment; and no person shall open or maintain a place or establishment at which to engage in or conduct, or hold himself out as engaging in or conducting, the business of a funeral director, unless first licensed so to do by the department of registration of the state of Utah.

History: L. 1939, ch. 94, § 5; C. 1943, 79-7-16.

53 C.J.S. Licenses § 13.

Collateral References.

Licenses↔8(1).

Restrictions on location of business of undertaker, 25 A. L. R. 764.

58-9-17. Requirements from applicants.—The following shall be considered as a minimum evidence satisfactory to the department of registration that the applicant is qualified to practice funeral directing in the state of Utah, to-wit:

The applicant for a funeral director license must:

- (a) Be at least twenty-one years of age and have had at least two years practical experience in the business or profession of funeral directing under the supervision of a duly licensed funeral director in this state or in any other state deemed to have equivalent standards.
- (b) Be a citizen of the United States and a resident of this state.
- (c) Specify the address at which the applicant proposes to engage in or conduct a place of business as a funeral director.
- (d) Produce satisfactory evidence of good moral character and temperate habits.
- (e) Have passed a satisfactory examination conducted under the rules and regulations of the department of registration upon the following subjects:

- (1) The signs of death,
- (2) The manner by which death may be determined,
- (3) The laws governing the preparation, burial and disposition of dead human bodies and the transportation of bodies disinterred or dying from infectious or contagious diseases, and
- (4) Public health laws and sanitary ordinances and regulations relating to funeral directing and embalming.

History: L. 1939, ch. 94, § 6; C. 1943, 79-7-17.

Collateral References.

Licenses↔20.
53 C.J.S. Licenses § 33.

58-9-18. License—Nontransferable—Registered with board of health.—No funeral director as defined in this act, shall carry on the business or profession or discharge any of the duties of funeral directing as defined in this act unless and until there has been issued to him a license in full force and effect at the time permitting him to carry on such business, and unless he shall have otherwise complied with the provisions of this

act. Such license shall be nontransferable, and shall be registered by the holder or owner with the state department of health.

History: L. 1939, ch. 94, § 7; C. 1943, 79-7-18.

Collateral References.
Licenses⇒37.
53 C.J.S. Licenses § 45.

58-9-19. Application for license—Examination of applicant.—Any person who at the time of the passage of this act is required to be licensed hereunder shall within sixty days apply to the department of registration on a form provided by the department, and upon payment of a fee of five dollars such person shall submit to an examination as herein provided at a time and place to be fixed by the department of registration, of which notice shall be given to said applicant by mail. Said applicant shall present himself at the time and place specified in said notice and the director shall thereupon proceed to examine such applicant under the rules and regulations of the department of registration; provided, that this provision for examination shall not apply to an applicant who is a duly licensed embalmer or an apprentice embalmer or who has been duly engaged as a funeral director for at least two years previous to the passage of this act.

History: L. 1939, ch. 94, § 8; C. 1943, 79-7-19.

Collateral References.
Licenses⇒22.
53 C.J.S. Licenses § 34.

58-9-20. License not a permit to practice embalming.—The preceding section shall not entitle or permit persons who obtain a funeral director license to practice embalming unless such persons are duly licensed embalmers.

History: L. 1939, ch. 94, § 9; C. 1943, 79-7-20.

Collateral References.
Licenses⇒36.
53 C.J.S. Licenses § 42.

58-9-21. License to be displayed.—Every person carrying on the business or profession of funeral directing under a firm name as herein provided, and every person carrying on such business or profession as an employee of another, shall display his license in a conspicuous place in his place of business or employment.

History: L. 1939, ch. 94, § 10; C. 1943, 79-7-21.

Collateral References.
Licenses⇒25.
53 C.J.S. Licenses § 35.

58-9-22. Unprofessional conduct.—The words “unprofessional conduct” as they relate to this act, are hereby defined to include:

(a) Misrepresentation or fraud in the conduct of the business or the profession of a funeral director.

(b) False or misleading advertising as a funeral director.

(c) Solicitation of funeral business by the licensee, his agents, assistants or employees, whether such solicitation occurs before or after death; provided, this provision shall not be deemed to prevent or prohibit general advertising.

(d) Employment by the licensee of persons known as "capers" or "steerers" or "solicitors" or other such persons to obtain funeral directing or embalming business.

(e) Employment, directly or indirectly, of any apprentice, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director; provided, this provision shall not be deemed to prevent and prohibit the solicitation for the sale of crypts, burial lots or cremation services by a licensee or his employee.

(f) The buying of business by the licensee, his agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission, bonus or gift by the licensee, his agents, assistants or employees for the purpose of securing business.

(g) Aiding or abetting an unlicensed person to practice embalming.

(h) Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery.

(i) Violation of any of the provisions of this act.

(j) Making any untruthful statement about or using any undue influence against or in any way, trying to prejudice any person or persons against any cemetery, mausoleum, crematory or mortuary.

History: L. 1939, ch. 94, § 11; C. 1943, 79-7-22.

remainder of this act operate in the event of the invalidity of any portion of this act."

Separability Clause.

Section 12 of Laws 1939, ch. 94 (Code 1943, 79-7-23) provided as follows: "If any portion of this act is invalid the legislature hereby declares that had it known of the invalidity of the portion at the time of this enactment it would have passed the remainder of this act without the invalid portion, and that it is the intention of the legislature that the re-

Repealing Clause.

Section 13 of Laws 1939, ch. 94 (Code 1943, 79-7-24) provided as follows: "All acts or parts of act in conflict with the provisions of this act are hereby repealed."

Collateral References.

Licenses[Ⓢ]25.

53 C.J.S. Licenses § 35.

CHAPTER 10

ENGINEERS AND LAND SURVEYORS

Section 58-10-1.	Purpose of act—Providing for registration of engineers.
58-10-2.	Definitions.
58-10-3.	Department of registration to administer—Committee of engineering examiners, appointment—Terms—Oaths.
58-10-4.	Qualifications.
58-10-5.	Removal of members of committee for cause.
58-10-6.	Meetings of committee.
58-10-7.	Records prima facie evidence of proceedings.
58-10-8.	Roster to be prepared.
58-10-9.	Requirements from applicants.
58-10-10.	Applications—Registration fees.
58-10-11.	Examinations—Scope.
58-10-12.	Certificates of registration—Use of seal.
58-10-13.	Firms, corporations or associations practicing.
58-10-14.	Registration without examination.
58-10-15.	Duties of public bodies engaging in construction of public works.

- 58-10-16. Persons exempted from provisions.
- 58-10-17. Construction.
- 58-10-18. General provisions of Title 58 applicable.
- 58-10-19. Constitutionality.

58-10-1. Purpose of act—Providing for registration of engineers.—In order to safeguard life, health and property, any person practicing or offering to practice the professions of engineering or of land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided.

History: L. 1935, ch. 79, § 1; C. 1943, 79-7a-1.

Title of Act.

An act to regulate the practices of professional engineering and land surveying; providing for the administration of this act through the department of registration; creating a committee of engineering examiners for professional engineers and land surveyors and defining its powers and duties; also imposing certain duties upon the state and political subdivisions thereof in connection with public work; and providing penalties.

Comparable Provisions.

Deering's Cal. Bus. and Prof. Code, § 6730 (requiring, in order to safeguard life and health and property and public welfare, that any person, either in private or public capacity, except such who are herein specifically excepted, who practices or offers to practice civil engineering, be qualified and registered by the board); § 6731 (defining branch of professional engineering embraced within term "civil engineering"); § 6735 (no person may use title "structural engineer" unless registered as civil engineer).

Idaho Code 1947, § 54-1201 (requiring that, in order to safeguard life, health and property, every person practicing or offering to practice professional engineering must submit evidence of qualifications and be registered).

Iowa Code 1950, § 114.1 (requiring registration in order to practice professional engineering or land surveying).

Cross-Reference.

Licensing of stationary engineers, 17-5-37.

1. Operation of chapter.

This chapter and chapter 3 are related in some particulars, and have at least some activities in common and to that degree overlap; but this does not require one engaged in either to procure a license in the other simply because some of the activities in one overlap the other. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

This statute construed with chapter 3 of this title does not contemplate that a professional engineer who performs some service in his own field in which he is duly licensed, such as making plans and designs in connection with an engineering problem or project, must procure a license as an architect merely because the particular engineering activities necessitate the making of plans and designs, or require supervision in construction, which might also be embraced within the scope of the functions of an architect. This does not mean, however, that the entire field of architecture is embraced within the field of professional engineering as defined by statute. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

In other words, the field of professional engineering involves the making of plans, designs and the supervision of construction, and this work may be done by an engineer under his license as provided in this chapter, provided such plans, designs and supervision relate to engineering problems, projects or undertakings, and to the engineering objectives to be accomplished. The statute does not contemplate that an engineer can make plans and designs and supervise the construction of any and every type of building. Nor does it require by express terms or by implication, that if a licensed engineer draws and makes designs in connection with some construction engineering problem or project, that he shall have to procure a license as an architect merely because such plans and designs might also be prepared with equal propriety by an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

The real criterion for determining if a licensed professional engineer must also have a license as an architect is not whether some service he performs might be performed lawfully by an architect, but whether such functions are necessarily embraced within the scope of engineering covered by his license. The issuance of a license in one field is not to be employed as a stepping stone to practice in some other field or even in a part of such other field, unless the functions of such other field performed by the licensee are neces-

sarily embraced within the scope of the activities authorized by the license. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

It is common knowledge that some professional engineers prepare certain types of plans and designs of structures, and that they also supervise certain construction which architects ordinarily do not perform. For instance, engineers frequently design and plan as well as supervise the construction of dams, power plants, factories, mills and other structures adapted entirely to the use or operation of certain types of machinery or specialized equipment. It depends upon the particular facts of a case whether the preparation of plans and supervision of construction are so far in the field of architecture or not necessarily connected with an engineering project that a licensed engineer should not attempt to perform such services without also having a license as an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

The assembling of machinery and equipment, and its proper co-ordination in the operation of a packing plant, appears to be in the field of engineering. It involves problems of public health, sanitation, and efficient and economical production. *Smith*

v. American Packing & Provision Co., 102 U. 351, 130 P. 2d 951.

The rehabilitation and remodeling of the killing floor and fancy meat department of a packing plant cannot be said to be such an undertaking as is necessarily exclusively or primarily in the field of architecture. The increase of production by correlation of machinery and equipment, and the arrangement of plant facilities to provide more economical and efficient production, fundamentally are not phases of architectural practice, but problems in engineering. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Collateral References.

Licenses \Leftrightarrow 11(1).

53 C.J.S. Licenses § 30.

Surveyors and civil engineers, 50 Am. Jur. 1149, Surveyors and Civil Engineers § 1 et seq.

Architect's or engineer's compensation as affected by inability to carry out plan or specifications at amount satisfactory to employer, 127 A. L. R. 410.

Constitutionality of statute regulating land surveyors or civil engineers, 55 A. L. R. 307.

58-10-2. Definitions.—Certain words and phrases used in this act, unless contrary to or inconsistent with the context, are defined as follows:

“Director” shall mean the director of registration of the state of Utah.

“Department” shall mean the department of registration of the state of Utah.

“Professional engineer” shall mean a person who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined.

“Professional engineering” includes any professional service, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare, or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of civil, electrical or mechanical engineering principles and data.

“Land surveyor” shall mean a person who engages in the practice of land surveying as hereinafter defined.

“Land surveying” includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or reestablishment of land boundaries and the plotting of lands and subdivision thereof.

“Committee” shall mean the committee of engineering examiners provided for by this act.

History: L. 1935, ch. 79, § 2; C. 1943, 79-7a-2.

Comparable Provisions.

Idaho Code 1947, § 54-1202 (similarly defining "engineer; professional engineer"; and "engineering; professional engineering").

Iowa Code 1950, § 114.2 (contains similar definitions).

1. Operation and effect of section.

This section does not require an engineer to qualify under chapter 3 of this title simply because some of his activities may overlap those of an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Collateral References.

Licenses ⇐ 11(1).
53 C.J.S. Licenses § 1.

58-10-3. Department of registration to administer—Committee of engineering examiners, appointment—Terms—Oaths.—The administration of the provisions of this act is hereby devolved upon the department of registration. The director of registration shall appoint a committee of engineering examiners, consisting of seven members, within ninety days after the passage of this act, from a list of fourteen nominees furnished and certified to the director as follows: By the Utah section of the American Society of Civil Engineers, four civil engineers; by the Utah chapter of the American Institute of Electrical Engineers, four electrical engineers; by the Utah section of the American Society of Mechanical Engineers, four mechanical engineers; and by the Utah Society of Engineers, two land surveyors. At all times the members of the committee shall be two civil engineers, two electrical engineers, two mechanical engineers and one land surveyor.

The members of the first committee shall be appointed to serve for the following terms: One civil engineer, one electrical engineer and one mechanical engineer, for two years; one civil engineer, one electrical engineer, one mechanical engineer and one land surveyor, for three years.

Every member of the committee shall receive a certificate of appointment from the director and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duty. Each member of the committee first appointed hereunder shall receive a certificate of registration under this act from said director. On the expiration of the term of any member, the director shall, in the manner hereinbefore provided, appoint for a term of three years, a registered professional engineer or land surveyor having the qualifications required by section 58-10-4, to take the place of the member whose term on said committee is about to expire. Each member shall hold office until the expiration of the term for which he is appointed or until a successor has been duly appointed and shall have qualified.

History: L. 1935, ch. 79, § 3; C. 1943, 79-7a-3.

Compiler's Note.

The reference in this section to "section 58-10-4" appeared in Code 1943 as "section 4."

Collateral References.

Licenses ⇐ 21.
53 C.J.S. Licenses § 37.

58-10-4. Qualifications.—Each member of the committee shall be a citizen of the United States and a resident of this state, and shall have been engaged in the practice of the profession of engineering for at

least twelve years, and shall have been in responsible charge of important engineering work for at least five years. Responsible charge of engineering teaching may be construed as responsible charge of important engineering work.

History: L. 1935, ch. 79, § 4; C. 1943, 79-7a-4. **Collateral References.**
Licenses⇒21.
53 C.J.S. Licenses § 37.

58-10-5. Removal of members of committee for cause.—The director may remove any member of the committee for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Vacancies in the membership of the committee shall be filled for the unexpired term by appointment by the director as provided in section 58-10-3.

History: L. 1935, ch. 79, § 5; C. 1943, 79-7a-5. **Collateral References.**
Licenses⇒21.
53 C.J.S. Licenses § 37.

Compiler's Note.

The reference in this section to "section 58-10-3" appeared in Code 1943 as "section 3."

58-10-6. Meetings of committee.—The committee shall be called together by the director within thirty days after its members are first appointed for the purpose of organizing and collaborating with the director on rules and regulations and procedure necessary to carry out the intent of this act. Thereafter the meetings of this committee shall be subject to the call of the director; provided, that there shall be held at least two regular meetings each year.

History: L. 1935, ch. 79, § 6; C. 1943, 79-7a-6. **Collateral References.**
Licenses⇒21.
53 C.J.S. Licenses § 37.

58-10-7. Records prima facie evidence of proceedings.—The records of the department shall be prima facie evidence of the proceedings of the department set forth therein, and a transcript thereof, duly certified by the director under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

History: L. 1935, ch. 79, § 7; C. 1943, 79-7a-7. **Collateral References.**
Licenses⇒22.
53 C.J.S. Licenses § 39.

Comparable Provision.

Idaho Code 1947, § 54-1210 (includes similar provision as to records of state board of engineering examiners).

58-10-8. Roster to be prepared.—A roster, in printed form, showing the names and places of business of all registered professional engineers and all registered land surveyors shall be prepared by the director during the month of December of every second year, commencing two years from the date this law becomes effective. Copies of this roster shall be mailed to each person so registered and placed on file with the secretary of state.

History: L. 1935, ch. 79, § 8; C. 1943, 79-7a-8. **Comparable Provision.**
Idaho Code 1947, § 54-1211 (roster of registered professional engineers and reg-

istered land surveyors to be published by board's secretary during December of each year).

Collateral References.

Licenses \Leftrightarrow 22.

53 C.J.S. Licenses § 39.

58-10-9. Requirements from applicants.—The following shall be considered as minimum evidence satisfactory to the department that the applicant is qualified for registration as a professional engineer, or land surveyor, respectively, to-wit:

(1) As a professional engineer:

(a) Graduation from an approved course in engineering of four years or more in a school or college approved by the department as of satisfactory standing; and a specific record of an additional four years or more of active practice in engineering work of a character satisfactory to the department, and indicating that the applicant is competent to be placed in responsible charge of such work; or

(b) Successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation from an approved four year engineering course; and a specific record of eight years or more of active practice in engineering work of a character satisfactory to the department and indicating that the applicant is competent to be placed in responsible charge of such work.

(2) As a land surveyor:

(a) Graduation from an approved course in surveying in a school or college approved by the department as of satisfactory standing; and an additional two years or more of active practice in land surveying work of a character satisfactory to the department and indicating that the applicant is competent to be placed in responsible charge of such work; or

(b) Successfully passing a written, or written and oral, examination in surveying prescribed by the department; and a specific record of six years or more of active practice in land surveying work of a character satisfactory to the department and indicating that the applicant is competent to be placed in responsible charge of such work.

At any time within five years after this act becomes effective:

(1) The director, upon recommendation of the committee, may accept as evidence that the applicant is qualified for registration as a professional engineer a specific record of twelve years or more of lawful active practice in engineering work of a satisfactory character and indicating that the applicant is qualified to design or to supervise construction of engineering works and has had responsible charge of important engineering work for at least five years; provided, applicant is not less than thirty-five years of age.

(2) The director, upon recommendation of the committee, may accept as evidence that the applicant is qualified for registration as a land surveyor a specific record of ten years or more of lawful active practice in land surveying work of a satisfactory character and indicating that the applicant has had responsible charge of important land surveying work for at least five years; and provided, applicant is not less than thirty years of age.

After this act shall have been in effect five years, the department shall issue certificates of registration only to those applicants who meet the requirements of section 9, (1) (a) or (b), or (2) (a) or (b), or section 58-1-19, Utah Code Annotated 1953; provided, that no person shall be eligible for registration as a professional engineer, or land surveyor, who is not of good character and reputation and who has not been recommended for registration by the committee.

In considering the qualifications of applicants, responsible charge of engineering teaching may be construed as responsible charge of engineering work. The satisfactory completion of each year of an approved course in engineering in a school or college approved by the department as of satisfactory standing, without graduation, shall be considered as equivalent to a year of active practice. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to two years of active practice; provided, however, that no applicant shall receive credit for more than four years of active practice because of educational qualifications.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be active practice in engineering work.

Any person having the necessary qualifications prescribed in this act to entitle him to registration shall be eligible for such registration though he may not be practicing his profession at the time of making his application.

History: L. 1935, ch. 79, § 9; C. 1943, 79-7a-9.

Compiler's Note.

The reference in this section to "section 58-1-19, Utah Code Annotated 1953" appeared in Code 1943 as "section 79-1-19, Revised Statutes of Utah, 1933."

Comparable Provision.

Iowa Code 1950, § 114.14 (subd. 1, a, is substantially the same as subd. (1) (a) herein, except that it requires "specific record of an additional two years or more of practical experience * * *"; subd. 1, b, is substantially the same as subd. (1) (b) herein, but requiring "a specific record of six years or more of practical experience * * *"; subds. 2, a and 2, b are similar to subds. (2) (a) and (2) (b) herein; also contains paragraph substantially identical with paragraph herein commencing with

words, "In considering the qualifications of applicants").

1. Scope and operation of section.

This section does not require an engineer to qualify under chapter 3 of this title, simply because some of his activities may overlap those of an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

2. Action to recover for services performed.

The complaint by engineer to recover for services rendered should allege that services performed came entirely within field of engineering and not within field of some other profession, such as architecture. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Collateral References.

Licenses—20.
53 C.J.S. Licenses § 33.

58-10-10. Applications—Registration fees.—Applications for registration shall be on forms prescribed and furnished by the department, shall contain statements made under oath, showing the applicant's education and detail summary of his technical work, and shall contain not less than

five references of whom three or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be \$15, \$10 of which shall accompany application, the remaining \$5 to be paid upon issuance of certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be \$10.

The fee for issuing a reciprocal license shall be \$10 and shall accompany the application.

The registration fee for land surveyors shall be \$10, which shall accompany application.

The fees for the right to practice professional engineering and land surveying shall be those required for the right to practice professional engineering.

Should an applicant holding a certificate to practice land surveying apply for and receive a certificate permitting him to practice professional engineering, he shall be required to pay only the difference between the fees for practicing land surveying and those required for practicing professional engineering.

Upon the filing of an application, should it, for cause, be denied further consideration, the initial fee deposited shall be returned to the applicant.

Should the director deny the issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

History: L. 1935, ch. 79, § 10; C. 1943, 79-7a-10.

Collateral References.

Licenses ⇨ 22.

53 C.J.S. Licenses § 39.

58-10-11. Examinations—Scope.—When oral or written examinations are required, they shall be held at such time and place as the director shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the committee with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in professional engineering and in land surveying. A candidate failing on examination may apply for reexamination at the expiration of six months and will be reexamined without payment of additional fee. Subsequent examination will be granted upon payment of a fee to be determined by the department.

History: L. 1935, ch. 79, § 11; C. 1943, 79-7a-11.

1. Operation and effect of section.

This section does not require an engineer to qualify under chapter 3 of this title simply because some of his activities

may overlap those of an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Collateral References.

Licenses ⇨ 22.

53 C.J.S. Licenses § 34.

58-10-12. Certificates of registration—Use of seal.—The director shall issue a certificate of registration, upon payment of the registration fee

as provided for in this act, to any applicant who, in the opinion of the director and the committee, has satisfactorily met all the requirements of this act. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering," and in the case of a registered land surveyor, the certificate shall authorize the practice of "land surveying." Certificate of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the director under the seal of the department.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the director, bearing the registrant's name and the legend, "Registered Professional Engineer," or "Registered Land Surveyor." Plans, specifications, plats, and reports issued by the registrant shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it shall be unlawful for anyone to stamp or seal any document with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

A certificate of registration as either a professional engineer or land surveyor shall not carry with it the right to practice both professions unless it is specifically permitted by said certificate.

History: L. 1935, ch. 79, § 12; C. 1943, 79-7a-12. **Collateral References.**

Licenses ⇄ 23.
53 C.J.S. Licenses § 40.

58-10-13. Firms, corporations or associations practicing.—A firm, co-partnership, corporation, or a joint stock association may engage in the practice of professional engineering or land surveying in this state; provided, only, such practice is carried on by professional engineers or land surveyors, respectively, registered in this state.

History: L. 1935, ch. 79, § 13; C. 1943, 79-7a-13. **Collateral References.**

Licenses ⇄ 20.
53 C.J.S. Licenses § 33.

58-10-14. Registration without examination.—At any time within one year after this act becomes effective, upon due application therefor and the payment of a registration fee of \$5, the director shall issue a certificate of registration, without oral or written examination, to any professional engineer or land surveyor who shall submit evidence under oath, satisfactory to the committee, that he is of good character, has been a resident of the state of Utah and has practiced professional engineering, if an engineer, or land surveying, if a surveyor, for at least four years immediately preceding the date of his application, and has had responsible charge of work of a character satisfactory to the department.

After this act shall have been in effect one year, the director shall issue certificates of registration only as provided for in section 58-10-9 hereof or section 58-1-19, Utah Code Annotated 1953.

History: L. 1935, ch. 79, § 14; C. 1943, 79-7a-14. **Compiler's Note.**

The references in this section to "section 58-10-9" and "section 58-1-19, Utah Code Annotated 1953" appeared in Code

1943 as "section 9" and "section 79-1-19, Revised Statutes of Utah, 1933" respectively.

Collateral References.

Licenses ⇐ 22.
53 C.J.S. Licenses § 39.

58-10-15. Duties of public bodies engaging in construction of public works.—After January 1, 1937, it shall be unlawful for this state, or for any of its political subdivisions, for any county, city or town, to engage in the construction of any public work involving professional engineering, unless the plans and specifications and estimates have been prepared by a registered professional engineer; provided, that nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed \$2,000.

History: L. 1935, ch. 79, § 15; C. 1943, 79-7a-15.

Collateral References.

Licenses ⇐ 39.
53 C.J.S. Licenses § 59.

58-10-16. Persons exempted from provisions.—The following persons shall be exempt from the provisions of this act, to-wit:

(a) A person not a resident of and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than sixty days in any calendar year; provided, such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act.

(b) A person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than sixty days in any calendar year the profession of engineering or land surveying, if he shall have filed with the department an application for a certificate of registration and shall have paid the fee required by this act. Such exemption shall continue only for such time as the department requires for the consideration of the application for registration; provided, that such person is legally qualified to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act.

(c) An employee or a subordinate of a person holding a certificate of registration under this act, or an employee of a person exempt from registration by this section; provided, his practice does not include responsible charge of design or supervision.

(d) Officers and employees of the government of the United States while engaged within this state in the practice of the profession of engineering or land surveying, for said government.

(e) Duly elected or appointed officers or employees of this state, or of any political subdivision thereof, at the time this act becomes effective and thereafter until the expiration of their existing terms of office, who are engaged in the practice of professional engineering or land surveying.

(f) Those rendering purely operative services in connection with mechanical plants or systems.

History: L. 1935, ch. 79, § 16; C. 1943, 79-7a-16.

1. Nonresident engineers.

This section does not require nonresident engineer to qualify under chapter 3 of this title, simply because some of his activities may overlap those of an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

A nonresident engineer, who has qualified in another state whose licensing department is not inferior to our own, does not have to procure a license here, even though he performs such services in this state as making plans and designs for buildings, where same are customarily performed by engineers, and are inseparably connected with and incidental to work as engineer. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Accordingly, if such engineer does not go outside his own field, that is, engineering, the performance of services falling in the field of architecture, but inseparably connected with engineering, would not preclude recovery for such services which he actually performed, if any, in the field of engineering, provided those services are severable and can be separately identified. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

2. Action to recover for services performed.

Complaint in action by nonresident engineer to recover under this statute, and not under foreign statute for services per-

formed, need not plead requirements of foreign registration and license law. A general allegation to show that plaintiff comes within the exception in this section is sufficient, if it relates specifically to time when the services were performed. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Nonresident engineer suing to recover for services performed within this state must allege and prove the facts as to license and qualifications for performing professional services. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Complaint must allege that plaintiff was a licensed professional engineer at or during time he performed services for which he seeks compensation by instant action. The complaint is demurrable if there is no allegation to the effect that plaintiff was a professional engineer or registered or qualified as such in foreign state at time services, for which recovery is sought, were rendered, or that at said time the requirements and qualifications in that state were not lower than in this state. In these particulars, however, the complaint may be amended. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951, as to necessity of alleging license in compliance with statute, was followed in *Olsen v. Reese*, 114 U. 411, 200 P. 2d 733, involving contractor's license under 58-6-1.

Collateral References.

Licenses—19(3).
53 C.J.S. Licenses § 31.

58-10-17. Construction.—This act shall not be construed to affect or prevent the practice of any other legally recognized profession.

History: L. 1935, ch. 79, § 17; C. 1943, 79-7a-17.

1. Scope and operation of section.

This section does not require an engineer to qualify under chapter 3 of this title, simply because some of his activities may overlap those of an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

In other words, this section is not intended to operate to defeat the act of which it is a part. It merely indicates that other professions and occupations

previously subject to license shall remain so. It does not state that if the activities of one licensed profession overlap with some activities within the scope of some other licensed profession, that as to those activities in common a person performing them must be licensed in both fields or professions. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Collateral References.

Statutes—179.
59 C.J. Statutes § 567.

58-10-18. General provisions of Title 58 applicable.—The general provisions of Title 58, Utah Code Annotated 1953, shall be applicable to the administration and enforcement of this act, in so far as they are not in conflict herewith.

History: L. 1935, ch. 79, § 18; C. 1943, 79-7a-18.

Compiler's Note.

The reference in this section "to Title

58, Utah Code Annotated 1953" appeared in Code 1943 as "Title 79, Revised Statutes of Utah, 1933."

1. Scope and operation of section.

This section does not require an engineer to qualify under chapter 3 of this title, simply because some of his activities

may overlap those of an architect. *Smith v. American Packing & Provision Co.*, 102 U. 351, 130 P. 2d 951.

Collateral References.

Licenses↔8(1).
53 C.J.S. Licenses § 13.

58-10-19. Constitutionality.—If any section or sections of this act shall be declared unconstitutional or invalid, this shall not invalidate any other sections of the act.

History: L. 1935, ch. 79, § 19; C. 1943, 79-7a-19.

Collateral References.

Statutes↔64(2).
59 C.J. Statutes § 224.

CHAPTER 11

HAIRDRESSERS, COSMETICIANS AND ELECTROLOGISTS

Section 58-11-1.	Qualifications.
58-11-2.	Requirements from applicants.
58-11-3.	License to qualified applicant—With or without haircutting.
58-11-4.	License to cut hair—Requirements.
58-11-5.	Temporary licenses.
58-11-6.	Transient permits.
58-11-7.	Admission from other states.
58-11-8.	Schools.
58-11-9.	Apprentices.
58-11-10.	Cards to be posted.
58-11-11.	Fees.
58-11-12.	Definitions.
58-11-13.	Shops—Licenses—Restricted uses of premises.
58-11-14.	Serving diseased persons forbidden—Fumigation of shops and schools.
58-11-15.	Unprofessional conduct.
58-11-16.	Reissue of authority after revocation for.
58-11-17.	Barbering excepted.

58-11-1. Qualifications.—Any resident of the state sixteen years old who possesses the necessary qualifications may apply for a license to practice as a beauty culturist or electrologist.

History: L. 1925, ch. 123, § 5; 1927, ch. 26, § 1; R. S. 1933, 79-8-1; L. 1933, ch. 55, § 1; C. 1943, 79-8-1.

Compiler's Note.

The 1933 amendment substituted "beauty culturist" for "hairdresser, cosmetician."

Comparable Provisions.

Deering's Cal. Bus. and Prof. Code, § 7332 (to be admitted to examination for certificate of registration and license as hairdresser and cosmetician or cosmetologist, applicant must be not less than 18 years of age, of good moral character and temperate habits); § 7342 (to be admitted to examination for certificate of registration and license as electrologist, applicant must be not less than 18 years of age, of

good moral character and temperate habits); § 7333 (junior operator must be over 16 years of age); § 7343 (junior electrologist must be over 17½ years of age).

Idaho Code 1947, § 54-801 (requiring certificate of registration as registered cosmetician in order to practice cosmetology).

Iowa Code 1950, § 157.3 (stating requirements of applicant for license to practice cosmetology); § 157.5 (requirements of applicant for license authorizing him to remove superfluous hair by use of electric needle).

Montana Rev. Codes 1947, § 66-801 (requiring license in order to practice or teach cosmetology, or to use or maintain place for practice or teaching of cosmetology, for compensation).

Cross-Reference.

Committee for hairdressers, 58-1-5, subd. (8).

Beauty specialists, 7 Am. Jur. 613, Barbers and Beauty Specialists § 1 et seq.

Collateral References.

Licenses↔20.
53 C.J.S. Licenses § 33.

Liability of barber, beauty shop or specialist, barber college, or school of beauty culture, for injury to patron, 63 A. L. R. 1074, 14 A. L. R. 2d 860.

Regulation of masseurs, 17 A. L. R. 2d 1183.

58-11-2. Requirements from applicants.—Every applicant for a license to practice as a beauty culturist or electrologist must:

(1) Produce satisfactory evidence of good moral character.

(2) Be free from contagious or infectious diseases (certified by a legally qualified physician).

(3) Have studied and served as a registered apprentice under the supervision of a licensed operator for the required length of time fixed by the department of registration for either or both beauty culturist or electrologist; provided, that said time shall not be less than six months for each of said occupations; or must have studied in a registered school not less than six months for each of said occupations.

(4) Be possessed of the requisite skill properly to perform the functions of a beauty culturist or electrologist, or both.

(5) Have sufficient knowledge of contagious and infectious diseases to recognize them and refuse service.

(6) Have a thorough knowledge of sanitary requirements of a beauty culturist or electrologist shop or school in this state.

(7) Pass a satisfactory examination before the department as to his knowledge of the particular occupation or occupations for which he desires a license.

History: L. 1925, ch. 123, § 5; 1927, ch. 26, § 1; R. S. 1933, 79-8-2; L. 1933, ch. 55, § 1; C. 1943, 79-8-2.

Collateral References.

Licenses↔20.
53 C.J.S. Licenses § 33.

Compiler's Note.

The 1933 amendment rewrote the entire text of this section.

58-11-3. License to qualified applicant—With or without haircutting.—If found qualified, the department of registration shall issue to the applicant upon payment of the required fee a license to practice such occupation or occupations. The license may include or exclude hair cutting.

History: L. 1925, ch. 123, § 5; 1927, ch. 26, § 1; R. S. 1933 & C. 1943, 79-8-3.

Collateral References.

Licenses↔11(1).
53 C.J.S. Licenses § 30.

58-11-4. License to cut hair—Requirements.—Every applicant for a license to cut hair must:

(1) Have at least one year's experience in cutting hair as an apprentice under a licensed operator or barber.

(2) Pass a satisfactory examination.

History: L. 1925, ch. 123, § 5; 1927, ch. 26, § 1; R. S. 1933 & C. 1943, 79-8-4.

Collateral References.

Licenses↔20.
53 C.J.S. Licenses § 33.

58-11-5. Temporary licenses.—The department of registration upon payment of the required examination fee may issue a permit to any person eligible for examination other than an apprentice. Said permit shall allow him to practice under a licensed operator until the next examination. In case of failure to appear at such examination (except for sickness duly attested by a legally qualified physician, or other acceptable excuse presented at that time) said applicant's permit shall be cancelled and his fee forfeited.

History: L. 1925, ch. 123, § 12; 1927, ch. 26, § 1; R. S. 1933 & C. 1943, 79-8-5.

Collateral References.

Licenses ⇨ 23.
53 C.J.S. Licenses § 40.

58-11-6. Transient permits.—The department of registration upon the payment of a fee of \$1 may issue a transient permit to any person presenting a license from another state. A transient permit shall allow the holder to practice for seven days from the date thereof, but shall not entitle its holder to examination nor shall such fee be accepted in part payment of an examination fee.

History: L. 1925, ch. 123, § 12; 1927, ch. 26, § 1; R. S. 1933 & C. 1943, 79-8-6.

Collateral References.

Licenses ⇨ 23.
53 C.J.S. Licenses § 40.

58-11-7. Admission from other states.—Every person who shall have practiced any one or more of the classified occupations for eighteen months or longer in another state or who shall have graduated from a school in another state recognized by the department of registration shall be entitled to apply for examination as operator, without first becoming an apprentice.

History: L. 1925, ch. 123, § 1; 1927, ch. 26, § 1; R. S. 1933 & C. 1943, 79-8-7.

Collateral References.

Licenses ⇨ 20.
53 C.J.S. Licenses § 33.

58-11-8. Schools.—No school for beauty culturists or electrologists shall be registered unless it is conducted by suitable persons with a sufficient number of certified instructors who hold operators' licenses, and wherein a course of not less than six months training is required for each of the occupations of electrologist and beauty culturist, as approved by the department of registration. Such instruction shall include practical demonstration and instruction in sanitation, sterilization and the use of antiseptics consistent with the requirements applicable to such occupations. The department may conduct examinations to determine the qualifications of instructors.

History: L. 1925, ch. 123, § 7; 1927, ch. 26, § 1; R. S. 1933, 79-8-8; L. 1933, ch. 55, § 1; C. 1943, 79-8-8.

Collateral References.

Licenses ⇨ 20.
53 C.J.S. Licenses § 33.

Compiler's Note.

The 1933 amendment made many material changes in the text.

Liability of barber, beauty shop or specialist, barber college or school of beauty culture, for injury to patron, 14 A. L. R. 2d 860.

58-11-9. Apprentices.—Every apprentice must file with the department of registration a statement in writing showing the name and place of

business of his instructor or school, the date of commencement of apprenticeship and the full name and age of such apprentice. No holder of an apprentice card shall work as an apprentice for longer than one year unless he shall have applied for and taken an examination for a license as an operator and shall have failed to pass such examination. In such case, upon his application and the payment of the fees required, he shall again be licensed as an apprentice until the next regular examination, when he shall again take such examination, and if he fails, he shall again be apprenticed until the next examination and if again failing, he shall no longer be allowed to work, either as an apprentice or operator.

History: L. 1925, ch. 123, § 6; 1927, ch. 26, § 1; R. S. 1933, 79-8-9; L. 1933, ch. 55, § 1; C. 1943, 79-8-9.

Collateral References.
Licenses ⇨ 20.
53 C.J.S. Licenses § 33.

Compiler's Note.

The 1933 amendment added the last two sentences.

58-11-10. Cards to be posted.—The department of registration shall furnish to each person to whom a license is issued, and on subsequent renewals thereof, a card bearing the signature of the director and the year for which issued, certifying that the holder thereof is entitled to practice the occupation of beauty culturist or electrologist, as the case may be, or to be an apprentice, or to operate a school in this state. It shall be the duty of every holder of a license to display such card or permit in a conspicuous place in his principal office, place of business or employment, or school so that it may be readily seen by all persons whom he may serve.

History: L. 1925, ch. 123, § 9; 1927, ch. 26, § 1; R. S. 1933, 79-8-10; L. 1933, ch. 55, § 1; C. 1943, 79-8-10.

Collateral References.
Licenses ⇨ 23.
53 C.J.S. Licenses § 40.

Compiler's Note.

The 1933 amendment made minor changes in text.

58-11-11. Fees.—Fees shall be paid by the respective applicants as follows:

For an examination, \$10 for each occupation; provided, that if an applicant shall fail to qualify he may continue to practice as an apprentice until the next subsequent examination, when he shall be examined upon payment of an additional fee of \$2.50.

For a license for beauty culturist.....	\$ 10.00
For a license for electrologist.....	5.00
For registration of a school.....	100.00
For an apprentice card.....	2.50
For annual renewal for each occupation.....	2.00
For shop, \$1; for an apprentice card, \$1; for a school, \$5.	

History: L. 1925, ch. 123, § 8; 1927, ch. 26, § 1; R. S. 1933, 79-8-11; L. 1933, ch. 55, § 1; C. 1943, 79-8-11.

Collateral References.
Licenses ⇨ 29.
53 C.J.S. Licenses § 48.

Compiler's Note.

The 1933 amendment made material changes in text and fees to be charged.

58-11-12. Definitions.—(1) A “beauty culturist” is any person who engages for compensation in any one or combination of the following practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching or coloring, or similar work, upon the hair of any person by any means, and who, with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams, engages for compensation in any one or combination of the following practices: massaging, cleansing, stimulating, manipulating, exercising or beautifying, or similar work upon the scalp, face, neck, arms, bust, or upper part of the body, or manicuring the nails.

(2) An “electrologist” is any person who engages for compensation in removing superfluous hair, warts or moles by the use of electricity, or otherwise, from the face or body of any person.

(3) An “apprentice” is a person who is engaged in learning within a beauty culturist or electrologist shop or school, and while so learning assists in any of the practices of said classified occupations under the immediate direction and supervision of a registered operator or instructor. No person is eligible to become an apprentice until he or she has attained the age of 16 years.

(4) An “operator” is a person, not an apprentice, who engages in and follows any of the practices of said classified occupations.

(5) An “instructor” is a person who gives instruction to apprentices.

(6) A “beauty culturist or electrologist shop” is any building or part thereof wherein such occupations are respectively practiced.

History: L. 1925, ch. 123, §§ 2, 3; 1927, ch. 26, § 1; R. S. 1933, 79-8-12; L. 1933, ch. 55, § 1; C. 1943, 79-8-12.

culturist” for “hairdresser” whenever used in text and added clause to subd. (3).

Compiler’s Note.

The 1933 amendment substituted “beauty

Collateral References.

Licenses⇒11(1).

53 C.J.S. Licenses § 30.

58-11-13. Shops—Licenses—Restricted uses of premises.—Any person who now or hereafter conducts a beauty culturist or electrologist shop shall secure from the department of registration a license to conduct such shop, which shall be renewed annually. It shall be unlawful to use any such shop for sleeping or residential purposes. The building in which such shop is located must have a sign on the outer wall designating the same as a beauty culturist or electrologist shop, and the work must be done in a room set apart for that purpose, which shop must be open to public inspection every day of the week, excepting holidays, between the hours of nine o’clock a. m. and five o’clock p. m.

History: L. 1925, ch. 123, §§ 3, 11; 1927, ch. 26, § 1; R. S. 1933, 79-8-13; L. 1933, ch. 55, § 1; C. 1943, 79-8-13.

Cross-Reference.

Holidays, Title 63.

Collateral References.

Licenses⇒11(1).

53 C.J.S. Licenses § 30.

Compiler’s Note.

The 1933 amendment substituted “beauty culturist” for “hairdressing, cosmetical” whenever used in text.

58-11-14. Serving diseased persons forbidden—Fumigation of shops and schools.—No beauty culturist or electrologist shall knowingly serve a person afflicted with any contagious or infectious disease, but it shall be

his duty to report the case of any such person to the state board of health or local health officer. No person so afflicted shall be served or apply for service in any beauty culturist or electrologist shop or school until he shall have first obtained a clean bill of health from a medical practitioner. The secretary of the state board of health shall have authority to fumigate at the expense of the person in charge of any beauty culturist or electrologist shop or school where any contagious or infectious disease has been contracted or where a person having such disease has been served.

History: L. 1925, ch. 123, § 4; 1927, ch. 26, § 1; R. S. 1933, 79-8-14; L. 1933, ch. 55, § 1; C. 1943, 79-8-14.

Compiler's Note.

The 1933 amendment substituted "beauty culturist" for "hairdresser, cosmetician" whenever used in text.

Cross-Reference.

Health regulations, 26-1-20 et seq.

Collateral References.

Health ⇄ 23.
39 C.J.S. Health § 20.

58-11-15. Unprofessional conduct.—The words "unprofessional conduct" as relating to beauty culturists and electrologists are hereby defined to include:

- (1) Habitual intemperance or excessive use of narcotics.
- (2) Having a contagious or infectious disease.
- (3) Gross incompetency.
- (4) Extortion or overcharging.
- (5) Keeping a shop or school, its furnishings, tools, utensils, linen or appliances in an insanitary condition.
- (6) Failing to display cards and permits as herein provided.
- (7) Using any advertising which will in any way deceive the public.

History: L. 1925, ch. 123, § 10; 1927, ch. 26, § 1; R. S. 1933, 79-8-15; L. 1933, ch. 55, § 1; C. 1943, 79-8-15.

culturist" for "hairdressers, cosmeticians" and rewrote subd. (7).

Compiler's Note.

The 1933 amendment substituted "beauty

Collateral References.

Licenses ⇄ 20.
53 C.J.S. Licenses § 33.

58-11-16. Reissue of authority after revocation for.—Any person, shop or school whose license or apprentice card has been revoked for unprofessional conduct may after the expiration of a time to be fixed by the department of registration, which shall not be less than thirty nor more than ninety days, apply to the department to have the same reissued.

History: L. 1925, ch. 123, § 10; 1927, ch. 26, § 1; R. S. 1933, 79-8-16; L. 1933, ch. 55, § 1; C. 1943, 79-8-16.

school" after "person" at beginning of section.

Compiler's Note.

The 1933 amendment added "shop or

Collateral References.

Licenses ⇄ 38.
53 C.J.S. Licenses § 44.

58-11-17. Barbering excepted.—Nothing in this chapter contained shall prohibit barbers from carrying on the occupation of barbering.

History: L. 1925, ch. 123, § 14; 1927, ch. 26, § 1; R. S. 1933 & C. 1943, 79-8-17.

Collateral References.

Licenses ⇄ 11(1).
53 C.J.S. Licenses § 30.