

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no: 40588 Date filed: 7-7-2016
 State Admin Rule Filing Id: _____ Time filed: _____

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 64	-
Changed to Admin. Code Ref. (R no.):	R	-	-

1. **Agency:** Commerce/Division of Occupational and Professional Licensing

Room no.: _____

Building: Heber M. Wells Building

Street address 1: 160 East 300 South

Street address 2: _____

City, state, zip: Salt Lake City UT 84111-2316

Mailing address 1: PO Box 146741

Mailing address 2: _____

City, state, zip: Salt Lake City UT 84114-6741

Contact person(s):

Name:	Phone:	Fax:	E-mail:
Jana Johansen	801-530-6621	801-530-6511	janajohansen@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section (catchline):**
Deception Detection Examiners Licensing Act Rule

3. **Type of notice:**
New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**
The Division and Deception Detection Examiners Licensing Board are proposing amendments due to HB 185, which was passed during the 2016 Legislative General Session, which added a new license classification of deception detection examination administrator. The proposed amendments also clarify language, correct spelling and renumbers sections.

5. **This change is a response to comments from the Administrative Rules Review Committee.**
No XXX; Yes ___

6. Summary of the rule or change:

Section R156-64- 102: The proposed amendments add a reference to the subsection the definition is used in and clarifies language. Section R156-64- 302a: This change condenses information into one subsection that will now apply to all licenses under Title 58, Chapter 64. Section R156-64- 302b: This change clarifies wording regarding existing education requirements. It removes reference to training and experience that is placed in Sections R156-64- 302c and 302d. Section R156-64-302c: This is a newly added section. It is using wording previously found in Section 302b. However, it contains language that does not pertain to that section heading and so is being moved to its own section. Section R156-64- 302d: This is a newly added section. It is using wording previously found in Section 302b. However, it contains language that does not pertain to that section heading and so is being moved to its own section. Section R156-64- 302e: This change details which classification must take the required exam. Section R156-64- 302f: This change is simply a spelling correction. Section R156-64- 305: This change makes this section applicable to all license classifications under this chapter. Section R156-64- 502: This change recodifies this section. Unprofessional conduct applicable to all classifications is relocated in a new Subsection (1) and unprofessional conduct only applicable to deception detection examiners and deception detection examiner interns is in Subsection (2). Also the American Polygraph Association Code of Ethics and Standards of Practice documents have been updated to the September 1, 2015 versions.

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes XXX

The Division will incur minimal costs of approximately \$75.00 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

B) Local government:

Affected: No XXX; Yes

The proposed amendments to this rule are brought about by new 2016 legislation. Specifically, the passing of HB 185, which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

C) Small businesses ("small business" means a business employing fewer than 50 persons)

Affected: No ; Yes XXX

The proposed amendments to this rule are brought about by new legislation. Specifically the passing of HB185, which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. The Division anticipates a small business may incur a minimal cost due to updating their information with the current rule.

D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

Affected: No ; Yes XXX

The proposed amendments to this rule are brought about by new legislation. Specifically the passing of HB185, which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. As a result, other persons such as associations, may incur a minimal cost due to updating their information with the current rule.

8. Compliance costs for affected persons:

The proposed amendments to this rule are brought about by new legislation. Specifically the passing of HB185, which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. As a result, licensees and applicants may incur a minimal cost due to updating their information with the current rule.

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

This rule change results from the addition, which occurred, in the 2016 legislative session, of deception detection examination administrators to the deception detection examiners licensing classification. This rule change clarifies language, corrects spelling, and renumbers subsections. No fiscal impact to business is anticipated.

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Giani, Executive Director

10 This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

Section 58-64-101

Subsection 58-1-106(1)(a)

Subsection 58-1-202(1)(a)

11 This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; *if none, leave blank*):

	First Incorporation	Second Incorporation
Official Title of Materials Incorporated (from title page)	American Polygraph Association Code of Ethics	American Polygraph Association Standards of Practice
Publisher	American Polygraph Association	American Polygraph Association
Date Issued		
Issue, or version	September 1, 2015	September 1, 2015
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference	-0-	-0-
Action: Adds, updates, or removes	Updates	Updates

(If this rule incorporates more than two items by reference, please attach additional pages)

12 The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):

08/31/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):

08/17/2016

At (hh:mm AM/PM):

9:00 AM

At (place):

160 East 300 South, Hearing Room 250 (2nd floor), Salt Lake City, Utah

13 This rule change may become effective on (mm/dd/yyyy):

09/07/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

14 Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:

licensing

deception detection examiner

deception detection intern

deception detection examination administrator

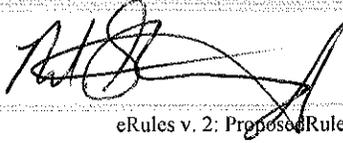
15 Attach an RTF document containing the text of this rule change
(filename):

R156-64.pro

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or
designee, and title:



Date
(mm/dd/yyyy)
: 7/7/2016

R156. Commerce, Occupational and Professional Licensing.

R156-64. Deception Detection Examiners Licensing Act Rule.

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in [~~Title 58, Chapters 1 and 64 or~~] this rule:

(1) "Activity sensor", as used in Subsection R156-64-502(2)(i), means a sensor attached to a deception detection instrument that is approved for use by the manufacturer of the instrument for placement under the buttocks of the examinee to detect movement and attempts at countermeasures by the examinee.

(2) "Clinical [~~testing~~] examination", as used in Subsection R156-64-502(2)(g), means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(3) "Comparison question", as used in Subsection R156-64-102(8), means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(4) "Concealed information examination", as used in Subsection R156-64-502(2)(g), means a psychophysiological technique for examining whether a person has knowledge of crime-relevant information [~~means a recognition examination administered to determine whether the examinee recognizes elements of a crime not reported to the public that are known only to the individual who engaged in the behavior, an investigator or both~~].

(5) "Deception detection case file", as used in Subsection R156-64-502(2)(o), means written records of a polygraph exam including:

- (a) case information;
- (b) the name and license number of the examiner;
- (c) a list of all questions used during the examination;
- (d) copies of all charts recorded during the examination;

and

- (e) either the audio or video recording of the examination.

(6) "Directed lie screening exam", as used in Subsection R156-64-502(2)(d), means a screening exam in which the examinee is instructed to lie to one or more questions.

(7) "Experienced deception detection examiner", as used in Section R156-64-302f, means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(8) "Irrelevant and relevant testing", as used in Subsection R156-64-502(2)(e), means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(9) "Irrelevant question", as used in Subsection R156-64-102(8), means a question of neutral impact, which does not relate

to a matter under inquiry, in a deception detection examination.

(10) "Post conviction sex offender testing", as used in Subsections R156-64-302f(2) and R156-64-502(2)(p), means testing of sex offenders and includes:

(a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and

(c) specific issue/single issue examinations.

(11) "Pre-employment examination", as used in Subsection R156-64-502(2)(d) and (g), means a deception detection screening examination administered as part of a pre-employment background investigation.

(12) [~~"Qualified continuing professional education"~~] means ~~continuing education that meets the standards set forth in Section R156-64-304.~~

~~---~~(13) [~~]~~ "Relevant question", as used in Subsection R156-64-102(8), means a question which relates directly to a matter under inquiry in a deception detection examination.

(~~[14]~~13) "Screening examination", as used in Subsections R156-64-502(2)(d) and (g), means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue in the absence of any specific allegation.

(~~[15]~~14) "Specific issue/single issue examination", as used in Subsections R156-64-102(10)(c) and R156-64-502(2)(d) and (g), means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(~~[16]~~15) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(~~[17]~~16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

(17) "Work experience", as used in Subsection 58-64-302(3)(f) and R156-64-302c(3), means work done while licensed as a deception detection examiner, deception detection examiner intern, deception detection examiner administrator, or while exempt from licensure under this chapter.

R156-64-302a. Qualifications for Licensure - Application Requirements - Criminal Background Check.

(~~[1]~~) Pursuant to Section 58-64-302, an application for licensure [~~as a deception detection examiner~~] under all classifications under Title 58, Chapter 64 shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a [~~check of~~] records check of:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.]

~~(2) Pursuant to Section 58-64-302, an application for licensure as a deception detection intern shall be accompanied by:~~

~~(a) two fingerprint cards for the applicant; and~~

~~(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of:~~

~~(i) the Federal Bureau of Investigation; and~~

~~(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.]~~

R156-64-302b. Qualifications for Licensure - Deception Detection Examiner and Deception Detection Examiner Intern Education Requirements.

~~[(1)]~~ In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i), deception detection examiner and deception detection examiner intern applicants ~~[the bachelor's degree]~~ shall have ~~[been]~~ earned a bachelor's degree from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges.]

~~(2) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), the 8,000 hours of investigation experience shall have been as a criminal or civil investigator with a federal, state, county or municipal law enforcement agency, or other equivalent investigation experience approved by the Division in collaboration with the Board.~~

~~(3) In accordance with Subsections 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), the college education and investigation experience may be combined in the ratio of 2000 hours of investigation experience for one year as a matriculated student in an accredited bachelor's degree program.~~

~~(4) In accordance with Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the deception detection training program shall consist of:~~

~~(a) graduation from a course of instruction in deception detection in a school accredited by the American Polygraph Association; and~~

~~(b) passing the Utah Deception Detection Theory Exam with a score of at least 75%.]~~

R156-64-302c. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), deception detection examiner and deception detection examiner intern applicants shall have 8,000 hours of investigation experience with a federal, state, county, or municipal law enforcement agency. Equivalent investigation experience may be approved by the Division in collaboration with

the Board.

(2) In accordance with Subsection 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), deception detection examiner and deception detection examiner intern applicants may complete, in part or in whole, the college education requirements in Subsection R156-64-302b through additional investigation experience in the ratio of 2,000 hours of investigation experience, beyond the required 8,000 hour requirement in Subsection R156-64-302c(1), for one year as a matriculated student in an accredited bachelor's degree program.

(3) In accordance with Subsection 58-64-302(3)(f), deception detection examination administrator applicants may complete, in part or in whole, the college education requirements in Subsection 58-64-302(3)(f) through additional work experience in the ratio of 2,000 hours of work experience for one year as a matriculated student in an accredited associate's degree program.

R156-64-302d. Qualifications for Licensure - Deception Detection Training Requirements.

(1) In accordance with Subsection 58-64-302(1)(g) and 58-64-302(2)(g), a deception detection training program for a deception detection examiner or a deception detection examiner intern shall consist of graduation from a deception detection training program in a school accredited by the American Polygraph Association.

(2) In accordance with Subsection 58-64-302(3)(g), a deception detection training program for a deception detection examination administrator shall consist of graduation from a certification program provided by a software manufacturer.

R156-64-302[c]e. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-1-309, deception detection examiner and deception detection examiner intern applicants shall pass the Utah Deception Detection Examiners Law and Rule Examination with a score of at least 75%.

R156-64-302[d]f. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsection 58-64-302(2)(h), each deception detection intern supervision agreement shall be in a form that requires a deception detection intern to serve an internship under the direct supervision of an experienced deception detection examiner as follows:

(1) the supervising deception detection examiner shall observe either directly or by video recording a minimum of five complete examinations;

(2) if the deception detection intern is performing post-conviction sex offender testing, the ~~[supervision]~~supervising deception detection examiner shall hold a certification for post-

conviction sex offender testing by the American Polygraph Association; and

(3) the "Internship Supervision Agreement", as required in Subsection 58-64-302(2)(h), shall be approved by the Division in collaboration with the Board.

R156-64-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall demonstrate a clear criminal history as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64 for all classifications under this chapter [~~in the classification of deception detection examiner~~].

(2) A criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Section R156-1-302 to determine appropriate licensure action.

R156-64-502. Unprofessional Conduct.

(1) "Unprofessional conduct for all classifications under this chapter includes:

(a) conducting an examination if the examinee is not physically present and aware than an examination is being conducted;

(b) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(c) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex, or age of such person;

(d) conducting an examination:

(i) on a person who is under the influence of alcohol or drugs; or

(ii) on a person who is under the age of 14 without written permission from the person's parent or guardian;

(e) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(f) failing to obtain a release or a physician's statement from the individual being examined if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(g) not creating and maintaining a record for every examination administered;

(h) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(i) not maintaining records of all deception detection examinations for a minimum of three years; and

([26]j) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated [January 10, 1999]September 1, 2015, and Standards of Practice, dated [January 20, 2007]September 1, 2015, which are hereby incorporated by reference.

(2) "Unprofessional conduct" specific to deception detection examiners and deception detection examiner interns includes:

([1]a) not immediately terminating [the]an examination upon [the]request of the examinee;

([2]b) not conducting a pre-examination review with the examinee [reviewing]where each question is reviewed word for word [prior to conducting the examination];

([3]c) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

([4]d) basing decisions concerning truthfulness or deception upon data that fails to meet the following minimum standards:

([a]i) two charts for a pre-employment exam;

([b]ii) two charts for a screening examination that is to be followed by a specific issue/single issue examination;

([c]iii) three repetitions of each question on a directed lie screening exam; or

([d]iv) three charts for all other exams; [

—(5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;]

([6]e) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the Division in collaboration with the Board;

([7]f) using a polygraph instrument that does not record as a minimum:

([a]i) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;

([b]ii) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;

([c]iii) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;

([d]iv) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and

([e]v) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph

instrument;

- (~~[8]~~g) conducting in a 24-hour period more than:
- (~~[a]~~i) five specific issue/single issue examinations;
- (~~[b]~~ii) five clinical examinations;
- (~~[c]~~iii) five screening examinations;
- (~~[d]~~iv) five pre-employment examinations; or
- (~~[e]~~v) 15 concealed information examinations;
- (~~[9]~~h) conducting an examination of less than the required

duration as follows:

- (~~[a]~~i) 30 minutes for a concealed information exam;
- (~~[b]~~ii) 60 minutes for a pre-employment exam; and
- (~~[c]~~iii) 90 minutes for all other exams;
- (~~[10]~~i) failing [~~after January 1, 2011,~~] to use an

activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;

(~~[11]~~j) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

(~~[12]~~k) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is a demonstratable overriding reason; [

~~(13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;]~~

(~~[14]~~l) [~~dividing fees or agreeing to split or divide the]splitting, or dividing fees received for deception detection services or otherwise paying [with]any person for referring a client; [~~

~~(15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;~~

~~(16) conducting an examination:~~

~~(a) on a person who is under the influence of alcohol or drugs; or~~

~~(b) on a person who is under the age of 14 without written permission from the person's parent or guardian;]~~

(~~[17]~~m) not providing at least 20 seconds between the beginning of one question and the beginning of the next; [

~~(18) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;~~

~~(19) failing to obtain a release from the individual being examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;]~~

(~~[20]~~n) not using a validated scoring method [numerical scoring system] in all examinations [~~except for relevant~~

irrelevant]; [

~~(21) not creating and maintaining a record for every examination administered;]~~

(~~22~~)o) creating ~~[records]~~deception detection case files not containing at a minimum the following:

(~~a~~)i) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

(~~b~~)ii) an index, either chronological or alphabetical, listing:

(~~i~~)A) the names of all persons examined;

(~~ii~~)B) the type of exam conducted;

(~~iii~~)C) the date of the exam;

(~~iv~~)D) the name and license number of the examiner;

(~~v~~)E) the file number in which the records are maintained;

(~~vi~~)F) the examiner's written opinion of the test results;

and

(~~vii~~)G) the time the examination began and ended;

(~~c~~)iii) all written reports or memoranda of verbal reports;

(~~d~~)iv) a list of all questions asked while the instrument was recording;

(~~e~~)v) background information elicited during the pre-test interviews;

(~~f~~)vi) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(~~g~~)vii) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(~~h~~)viii) any recordings made of the examination; and

(~~i~~)ix) documentation of an instrument functionality check as mandated by the manufacture of the instrument being used; and ~~[on a semi-annual basis including a functionality chart;~~

~~(23) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;]~~

(~~24~~)p) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American Polygraph Association for post-~~[-]~~conviction sex offender testing. ~~[;~~

~~(25) not maintaining records of all deception detection examinations for a minimum of three years; and]~~

KEY: licensing, deception detection examiner, deception detection intern, deception detection examination administrator

Date of Enactment or Last Substantive Amendment: ~~[October 23,~~ 2014] 2016

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-1-106(1) (a); 58-1-202(1) (a)