

**DIVISION OF OCCUPATIONAL AND PROFESSIONAL
LICENSING ACT AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Patrice M. Arent

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING; REVISING THE DIVERSION PROGRAM; INCREASING THE MAXIMUM DURATION OF DIVERSION PROGRAMS; TOLLING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE ACTION DURING DIVERSION; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-1-404, as renumbered and amended by Chapter 297, Laws of Utah 1993

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

Section 1. Section **58-1-404** is amended to read:

58-1-404. Diversion -- Procedure.

(1) As used in this section, "diversion" means suspending action to discipline a licensee charged with certain offenses within the category of unprofessional conduct on the condition that the licensee agrees to participate in an educational or rehabilitation program or fulfill some other condition.

(2) (a) The director may establish, as circumstances require, a diversion advisory committee for each occupation or profession or similar groups of occupations or professions licensed by the division. The committees shall assist the director in the administration of this section.

(b) Each committee shall consist of three or more licensees from the same or similar occupation or profession as the person whose conduct is the subject of the committee's consideration. The members of a diversion advisory committee shall be [~~nominated~~] appointed by the director from nominations submitted by the corresponding board established for the same or similar occupation or profession under Section 58-1-201 or from other qualified nominees developed by or submitted to the division. Committee members may not serve concurrently as

members of the corresponding board. Committee members shall serve voluntarily without remuneration. The director may dissolve any diversion advisory committee, remove or request the replacement of any member of a committee, and establish any procedure that is necessary and proper for a committee's administration.

(3) The director may, after consultation with the appropriate diversion advisory committee and by written agreement with the licensee, divert the licensee to a diversion program, at any time after receipt of a complaint, prior to notifying a licensee that formal disciplinary action for unprofessional conduct is being considered against the licensee, or prior to the conclusion of a hearing under Section 58-1-108.

(4) The division shall define by rule the particular offenses within the category of unprofessional conduct which may be subject to diversion. A licensee may be eligible for a diversion program only once for the same or similar offense and is not eligible if previously disciplined by the division, by a licensing agency of another state, or by a federal government agency for the same or a similar offense. Diversion programs may not be longer than [~~two~~] five years. A decision by the director not to divert a licensee is not subject to appeal or judicial review.

(5) A licensee may be represented by counsel during the negotiations for diversion, at the time of the execution of the diversion agreement, and at any hearing before the director relating to a diversion program.

(6) Any diversion agreement entered into between the division and the licensee shall contain a full detailed statement of the requirements agreed to by the licensee and the reasons for diversion.

(7) A diversion agreement may not be approved unless the licensee in the agreement knowingly and intelligently waives the right to a hearing under Section 58-1-108.

(8) The director shall dismiss the charges against a licensee who has completed the requirements of his diversion agreement. The licensee may not thereafter be subject to disciplinary action for the conduct involved.

(9) Diversion is not a determination that charges have been proven. If the charges are dismissed following diversion, the matter shall be treated as if the charge had never been filed, except the fact that a licensee has completed a diversion program and the terms and conditions of

the diversion program may be considered by the division in determining appropriate disciplinary action to be taken in the event the licensee is charged in the future with the same or a similar offense. No reporting or release of information regarding the diversion program of an individual licensee or the fact that charges were filed may be made to anyone outside the division. The licensee may not be required to report to any person, agency, or corporation the fact that he has been subject to a diversion program if the licensee successfully completes the diversion program. Negotiations or hearings regarding diversion may not be subject to the requirements of Title 52, Chapter 4, Open and Public Meetings.

(10) If, during the course of the diversion of a licensee, information is brought to the attention of the director that the licensee has violated the diversion agreement, and if it appears in the best interest of the public to proceed with the charges, the director after consultation with the diversion advisory committee, shall cause to be served on the licensee an order to show cause specifying the facts relied upon by the director to terminate diversion and which sets a time and place for a hearing to determine whether or not the licensee has violated the diversion agreement. If, after the hearing, the director finds that the licensee has failed to comply with any terms or conditions of the diversion agreement, the director shall proceed with the charges against the licensee which resulted in the diversion agreement plus any additional charges of unprofessional conduct arising from a violation of the diversion agreement.

(11) The administrative statute of limitations for taking disciplinary action described in Subsection 58-1-401(5) shall be tolled during a diversion program.