

1 **DIVISION OF OCCUPATIONAL AND**
2 **PROFESSIONAL LICENSING ACT**
3 **AMENDMENTS**

4 1999 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Patrice M. Arent**

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

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

12 AMENDS:

13 **58-1-404**, as renumbered and amended by Chapter 297, Laws of Utah 1993

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

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

16 **58-1-404. Diversion -- Procedure.**

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

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

25 (b) Each committee shall consist of three or more licensees from the same or similar
26 occupation or profession as the person whose conduct is the subject of the committee's
27 consideration. The members of a diversion advisory committee shall be [nominated] appointed

28 by the director from nominations submitted by the corresponding board established for the same
29 or similar occupation or profession under Section 58-1-201 or from other qualified nominees
30 developed by or submitted to the division. Committee members may not serve concurrently as
31 members of the corresponding board. Committee members shall serve voluntarily without
32 remuneration. The director may dissolve any diversion advisory committee, remove or request the
33 replacement of any member of a committee, and establish any procedure that is necessary and
34 proper for a committee's administration.

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

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

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

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

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

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

57 (9) Diversion is not a determination that charges have been proven. If the charges are
58 dismissed following diversion, the matter shall be treated as if the charge had never been filed,

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

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

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

Legislative Review Note
as of 1-20-99 11:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel