

Senator Scott N. Howell proposes to substitute the following bill:

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

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott N. Howell

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; REVISING THE REQUIREMENTS FOR LICENSURE BY ENDORSEMENT; PROVIDING FOR LICENSURE BY EQUIVALENCY; PROVIDING FOR ACCESS TO RELEVANT RECORDS MAINTAINED BY OTHER GOVERNMENT AGENCIES; AUTHORIZING THE USE OF FINGERPRINT CARDS AND BACKGROUND CHECKS FOR APPLICANTS; CREATING THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING EDUCATION AND ENFORCEMENT FUND; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

58-1-302, as renumbered and amended by Chapter 297, Laws of Utah 1993

58-1-401, as last amended by Chapter 175, Laws of Utah 1996

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

58-1-503, as renumbered and amended by Chapter 297, Laws of Utah 1993

ENACTS:

58-1-405, Utah Code Annotated 1953

58-1-505, Utah Code Annotated 1953

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

Section 1. Section **58-1-302** is amended to read:

58-1-302. License by endorsement and equivalency.

1 (1) The division may issue a license [~~without examination~~] by endorsement to a person
2 who [~~has been~~];

3 (a) is currently licensed in good standing in any state, district, or territory of the United
4 States [or in any foreign country, whose education, experience, and examination requirements are,
5 or were at the time the license was issued, equal to those of this state. Before any person may be
6 issued a license under this section, he shall produce satisfactory evidence of his qualifications,
7 identity, and good standing in his occupation or profession.];

8 (b) unless a different hourly requirement is provided in the specific licensing chapter
9 within this title, has been actively engaged in the legal practice of his occupation or profession for
10 not less than 4,000 hours during the three years immediately preceding the date of application for
11 licensure in Utah;

12 (c) does not have any action pending against his license; and

13 (d) meets all additional requirements for licensure by endorsement as may be required
14 under the specific licensing chapter or by division rule.

15 (2) The division may issue a license by equivalency to a person who:

16 (a) has received his education and training outside the United States;

17 (b) meets all applicable statutory and regulatory requirements for entry into the United
18 States;

19 (c) has a current certificate from a recognized independent credentialing organization, as
20 defined by division rule in collaboration with the appropriate board, verifying that the applicant's
21 education, training, license, and experience:

22 (i) are equivalent to that required for a Utah licensee;

23 (ii) are authentic; and

24 (iii) in the case of a license, is active and in good standing;

25 (d) has passed all licensing or certification examinations as may be required under the
26 specific licensing chapter or by division rule; and

27 (e) meets all additional requirements for a license by equivalency as may be required under
28 the specific licensing chapter or by division rule.

29 (3) Before any person may be issued a license under this section, he shall produce
30 satisfactory evidence of his qualifications, identity, and good standing in his occupation or
31 profession.

1 Section 2. Section **58-1-401** is amended to read:

2 **58-1-401. Grounds for denial of license or other action upon a license -- Criminal**
3 **history checks -- Disciplinary proceedings -- Time limitations -- Sanctions.**

4 (1) The division shall refuse to issue a license to an applicant and shall refuse to renew or
5 shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee
6 who does not meet the qualifications for licensure under this title.

7 (2) The division may refuse to issue a license to an applicant and may refuse to renew or
8 may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or
9 otherwise act upon the license of any licensee in any of the following cases:

10 (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute
11 or rule under this title;

12 (b) the applicant or licensee has engaged in unlawful conduct as defined by statute under
13 this title;

14 (c) the applicant or licensee has been determined to be mentally incompetent for any
15 reason by a court of competent jurisdiction; or

16 (d) the applicant or licensee is unable to practice the occupation or profession with
17 reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics,
18 chemicals, or any other type of material, or as a result of any other mental or physical condition,
19 when the licensee's condition demonstrates a threat or potential threat to the public health, safety,
20 or welfare.

21 (3) (a) The division may query criminal history records or other relevant records from
22 other state agencies to which it has direct access in accordance with Section 58-1-405. As
23 specified by rule, the division may also require applicants for initial licensure to submit fingerprint
24 cards in a form acceptable to the division and to consent to a fingerprint background check by the
25 Utah Bureau of Criminal Identification and the Federal Bureau of Investigation.

26 (b) The division may request the Department of Public Safety to complete a Federal
27 Bureau of Investigation criminal background check for any applicant for licensure through the
28 national criminal history system (NCIC) or any successor system.

29 (c) The cost of any background check or fingerprinting conducted in accordance with this
30 section shall be borne by the applicant.

31 (d) Any license issued where a background check is required but has not yet been

1 completed shall be considered conditional, pending completion of the criminal background check.
2 If the criminal background check reveals that the applicant has failed to accurately disclose a
3 criminal history, the applicant's license shall be immediately and automatically revoked.

4 (e) Any person whose license has been revoked under Subsection (3)(d), is entitled to a
5 postrevocation hearing upon timely request, to challenge the revocation. The hearing shall be
6 conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

7 [~~3~~] (4) Any licensee whose license to practice an occupation or profession regulated by
8 this title has been suspended, revoked, or restricted may apply for relicensure or reinstatement of
9 [the license] licensure at reasonable intervals and upon compliance with any conditions imposed
10 upon the licensee by statute, rule, or terms of the license suspension, revocation, or restriction.

11 [~~4~~] (5) The division may issue cease and desist orders:

12 (a) to a licensee or applicant who may be disciplined under Subsection (1) or (2);

13 (b) to any person who engages in or represents himself to be engaged in an occupation or
14 profession regulated under this title; and

15 (c) to any person who otherwise violates this title or any rules adopted under this title.

16 [~~5~~] (6) (a) The division may not take disciplinary action against any person for
17 unprofessional or unlawful conduct under this title, unless the division initiates an adjudicative
18 proceeding regarding the conduct within four years after the conduct is reported to the division,
19 except under Subsection [~~5~~](6)(b).

20 (b) The division may not take disciplinary action against any person for unprofessional
21 or unlawful conduct more than ten years after the occurrence of the conduct, unless the proceeding
22 is in response to a civil or criminal judgment or settlement and the proceeding is initiated within
23 one year following the judgment or settlement.

24 Section 3. Section **58-1-404** is amended to read:

25 **58-1-404. Diversion -- Procedure.**

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

30 (2) (a) The director may establish, as circumstances require, a diversion advisory
31 committee for each occupation or profession or similar groups of occupations or professions

1 licensed by the division. The committees shall assist the director in the administration of this
2 section.

3 (b) Each committee shall consist of three or more licensees from the same or similar
4 occupation or profession as the person whose conduct is the subject of the committee's
5 consideration. The members of a diversion advisory committee shall be [~~nominated~~] appointed
6 by the director from nominations submitted by the corresponding board established for the same
7 occupation or profession under Section 58-1-201 or from other qualified nominees selected by the
8 division. Committee members may not serve concurrently as members of the corresponding
9 board. Committee members shall serve voluntarily without remuneration. The director may
10 dissolve any diversion advisory committee, remove or request the replacement of any member of
11 a committee, and establish any procedure that is necessary and proper for a committee's
12 administration.

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

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

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

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

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

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

4 (9) Diversion is not a determination that charges have been proven. If the charges are
 5 dismissed following diversion, the matter shall be treated as if the charge had never been filed,
 6 except the fact that a licensee has completed a diversion program and the terms and conditions of
 7 the diversion program may be considered by the division in determining appropriate disciplinary
 8 action to be taken in the event the licensee is charged in the future with the same or a similar
 9 offense. No reporting or release of information regarding the diversion program of an individual
 10 licensee or the fact that charges were filed may be made to anyone outside the division. The
 11 licensee may not be required to report to any person, agency, or corporation the fact that he has
 12 been subject to a diversion program if the licensee successfully completes the diversion program.
 13 Negotiations or hearings regarding diversion may not be subject to the requirements of Title 52,
 14 Chapter 4, Open and Public Meetings.

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

25 Section 4. Section **58-1-405** is enacted to read:

26 **58-1-405. Access to records**

27 (1) The division § [shall be allowed direct access to records of other state agencies which are
 28 relevant to the division's responsibilities under this title. These records] § shall § [include] HAVE
 28a ACCESS TO § records
 29 maintained by the Department of Public Safety, including criminal history records or warrant of
 30 arrest information maintained by the Law Enforcement and Technical Services Division.

31 (2) The division shall implement procedures acceptable to § [each state agency] THE
 31a DEPARTMENT OF PUBLIC SAFETY § to ensure the

1 security and confidentiality of the records of § ~~[that agency]~~ THE DEPARTMENT OF PUBLIC
1a SAFETY § .

2 Section 5. Section **58-1-503** is amended to read:

3 **58-1-503. Maximum civil penalty for violation of court order.**

4 (1) If any written order issued under this title or if an injunction or temporary restraining
5 order issued by a court of competent jurisdiction relating to this title is violated, the court may
6 impose a civil penalty of not more than \$2,000 for each day the written order, injunction, or
7 temporary restraining order is violated, if the person in violation has received notice of the written
8 order, injunction, or temporary restraining order.

9 (2) All penalties ordered under this section shall be deposited into the [General] Division
10 of Occupational and Professional Licensing Education and Enforcement Fund.

11 Section 6. Section **58-1-505** is enacted to read:

12 **58-1-505. Education and enforcement fund.**

13 (1) There is created a restricted account in the General Fund known as the "Division of
14 Occupational and Professional Licensing Education and Enforcement Fund."

15 (2) The fund consists of monies from administrative penalties and fines collected pursuant
16 to this title.

17 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
18 into the fund.

19 (4) The director may make distributions of monies appropriated from the fund by the
20 Legislature for the following purposes:

21 (a) education and training of licensees under this title;

22 (b) education and training of the public or other interested persons in matters concerning
23 occupational and professional laws and practices; and

24 (c) enforcement of this title including:

25 (i) investigating unprofessional or unlawful conduct; and

26 (ii) providing legal representation to the division when the division takes legal action
27 against a person engaging in unprofessional or unlawful conduct.

28 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
29 shall be transferred to the General Fund.

30 (6) The division shall report annually to the appropriate appropriations subcommittee of
31 the Legislature concerning the fund.

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