

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; PROVIDING ADMINISTRATIVE FINE AND CITATION AUTHORITY; PROVIDING FOR ENFORCEMENT; 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

59-1-403, as last amended by Chapter 172, Laws of Utah 1997

ENACTS:

58-1-405, Utah Code Annotated 1953

58-1-502.1, Utah Code Annotated 1953

SB0036S1

1 **58-1-502.2**, Utah Code Annotated 1953

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

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

4 **58-1-302. License by endorsement and equivalency.**

5 (1) The division may issue a license [without examination] by endorsement to a person
6 who [has been]:

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

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

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

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

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

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

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

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

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

27 (ii) are authentic; and

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

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

31 (e) meets all additional requirements for a license by equivalency as may be required under

1 the specific licensing chapter or by division rule.

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

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

6 **58-1-401. Grounds for denial of license or other action upon a license -- Criminal**
7 **history checks -- Disciplinary proceedings -- Time limitations -- Sanctions.**

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

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

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

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

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

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

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

30 (b) The division may request the Department of Public Safety to complete a Federal
31 Bureau of Investigation criminal background check for any applicant for licensure through the

1 national criminal history system (NCIC) or any successor system.

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

4 (d) Any license issued where a background check is required but has not yet been
5 completed shall be considered conditional, pending completion of the criminal background check.

6 If the criminal background check reveals that the applicant has failed to accurately disclose a
7 criminal history, the applicant's license shall be immediately and automatically revoked.

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

11 [~~(3)~~] (4) Any licensee whose license to practice an occupation or profession regulated by
12 this title has been suspended, revoked, or restricted may apply for relicensure or reinstatement of
13 [~~the license~~] licensure at reasonable intervals and upon compliance with any conditions imposed
14 upon the licensee by statute, rule, or terms of the license suspension, revocation, or restriction.

15 [~~(4)~~] (5) The division may issue cease and desist orders:

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

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

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

20 [~~(5)~~] (6) (a) The division may not take disciplinary action against any person for
21 unprofessional or unlawful conduct under this title, unless the division initiates an adjudicative
22 proceeding regarding the conduct within four years after the conduct is reported to the division,
23 except under Subsection [~~(5)~~](6)(b).

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

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

29 **58-1-404. Diversion -- Procedure.**

30 (1) As used in this section, "diversion" means suspending action to discipline a licensee
31 charged with certain offenses within the category of unprofessional conduct on the condition that

1 the licensee agrees to participate in an educational or rehabilitation program or fulfill some other
2 condition.

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

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

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

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

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

31 (6) Any diversion agreement entered into between the division and the licensee shall

1 contain a full detailed statement of the requirements agreed to by the licensee and the reasons for
2 diversion.

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

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

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

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

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

30 **58-1-405. Access to records**

31 (1) The division shall be allowed direct access to records of other state agencies which are

1 relevant to the division's responsibilities under this title. These records shall include:

2 (a) records maintained by the Department of Public Safety, including criminal history
3 records or warrant of arrest information maintained by the Law Enforcement and Technical
4 Services Division;

5 (b) records maintained by the Department of Workforce Services; and

6 (c) records maintained by the Utah State Tax Commission.

7 (2) The division shall implement procedures acceptable to each state agency to ensure the
8 security and confidentiality of the records of that agency.

9 Section 5. Section **58-1-502.1** is enacted to read:

10 **58-1-502.1. Unlawful and unprofessional conduct -- Civil fine.**

11 (1) If upon inspection or investigation, the division concludes that a person has engaged
12 in unprofessional conduct or unlawful conduct as defined under this title or rules enacted under
13 this title, and that disciplinary action is appropriate, the director or his designee from within the
14 division shall promptly:

15 (a) issue a citation to the person according to this chapter and any rules enacted thereunder;

16 (b) attempt to negotiate a stipulated settlement; or

17 (c) notify the person to appear before an adjudicative proceeding conducted under Title
18 63, Chapter 46b, Administrative Procedures Act.

19 (2) Any person who has engaged in unprofessional or unlawful conduct, as evidenced by
20 an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
21 proceeding, may be assessed a fine pursuant to this section and may, in addition to or in lieu of any
22 such fine, be ordered to cease and desist from engaging in the unprofessional or unlawful conduct.

23 (3) The division shall define by rule the particular offenses within the categories of
24 unprofessional or unlawful conduct, the violation of which may be resolved through the issuance
25 of a citation.

26 (a) Except for a cease and desist order, the licensure sanctions cited in Section 58-1-401
27 may not be assessed through a citation.

28 (b) Each citation issued under this section shall be in writing and describe with
29 particularity the nature of the violation, including a reference to the provision of the chapter, rule,
30 or order alleged to have been violated. The citation shall clearly state that the recipient must notify
31 the division in writing within 20 calendar days of service of the citation if the recipient wishes to

1 contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures
2 Act. The citation shall clearly explain the consequences of failure to timely contest the citation
3 or to make payment of any fines assessed by the citation within the time specified in the citation.

4 (c) Each citation issued under this section or a copy of each citation shall be served either
5 in the same manner as provided in the Utah Rules of Civil Procedure for service of a summons or
6 by registered or certified mail.

7 (d) If within 20 calendar days from the service of the citation, the person to whom the
8 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
9 order of the division and is not subject to further agency review. The period to contest a citation
10 may be extended by the division for good cause.

11 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the
12 license of a licensee who fails to comply with a citation after it becomes final.

13 (f) The failure of an applicant for licensure to comply with a citation after it becomes final
14 is a ground for denial of licensure.

15 (g) No citation may be issued under this section more than six months after the occurrence
16 of any violation is reported to the division.

17 (4) (a) Unless otherwise specified in a specific chapter of this title, fines shall be assessed
18 by the director or his designee as follows:

19 (i) for a first offense handled pursuant to this section, a fine of up to \$1,000;

20 (ii) for a second offense handled pursuant to this section, a fine of up to \$2,000; and

21 (iii) for any subsequent offense handled pursuant to this section, a fine of up to \$2,000 for
22 each day of continued offense.

23 (b) (i) For purposes of issuing a final order under this section and assessing a fine under
24 Subsection (4)(a), an offense constitutes a second or subsequent offense if:

25 (A) the division previously issued a final order determining that a person committed a first
26 or second offense; or

27 (B) (I) the division has initiated an action for a first or second offense;

28 (II) no final order has been issued by the division in that action;

29 (III) the division determines during an investigation that occurred after the initiation of that
30 action that the person committed a second or subsequent offense; and

31 (IV) after determining that the person committed a second or subsequent offense, the

1 division issues a final order on that action.

2 (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(b)(i),
3 the division shall comply with the requirements of this section.

4 (5) All fines imposed by the director under Subsection (4)(a) shall be deposited into the
5 Division of Occupational and Professional Licensing Education and Enforcement Fund.

6 (6) (a) All fines under this section shall be collected by the Office of State Debt Collection
7 in accordance with the requirements and provisions of Title 63A, Chapter 8.

8 (b) The Office of State Debt Collection shall be entitled to recover all costs and any
9 reasonable attorney's fees that may be incurred in the collection of any fine imposed under this
10 section.

11 Section 6. Section **58-1-502.2** is enacted to read:

12 **58-1-502.2. 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 from the fund for the following purposes:

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

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

23 (c) enforcement of this title including:

24 (i) investigating unprofessional or unlawful conduct; and

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

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

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

31 Section 7. Section **58-1-503** is amended to read:

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

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

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

9 Section 8. Section **59-1-403** is amended to read:

10 **59-1-403. Confidentiality -- Penalty -- Application to property tax.**

11 (1) Any tax commissioner, agent, clerk, or other officer or employee of the commission
12 or any representative, agent, clerk, or other officer or employee of any county, city, or town may
13 not divulge or make known in any manner any information gained by him from any return filed
14 with the commission. The officials charged with the custody of such returns are not required to
15 produce any of them or evidence of anything contained in them in any action or proceeding in any
16 court, except:

17 (a) in accordance with judicial order;

18 (b) on behalf of the commission in any action or proceeding under this title or other law
19 under which persons are required to file returns with the commission;

20 (c) on behalf of the commission in any action or proceeding to which the commission is
21 a party; or

22 (d) on behalf of any party to any action or proceeding under this title when the report or
23 facts shown thereby are directly involved in such action or proceeding. In any event, the court
24 may require the production of, and may admit in evidence, any portion of reports or of the facts
25 shown by them, as are specifically pertinent to the action or proceeding.

26 (2) This section does not prohibit:

27 (a) a person or his duly authorized representative from receiving a copy of any return or
28 report filed in connection with that person's own tax;

29 (b) the publication of statistics as long as they are classified to prevent the identification
30 of particular reports or returns;

31 (c) the inspection by the attorney general or other legal representative of the state of the

1 report or return of any taxpayer:

2 (i) who brings action to set aside or review the tax based on such report or return;

3 (ii) against whom an action or proceeding is contemplated or has been instituted under this
4 title; or

5 (iii) against whom the state has an unsatisfied money judgment.

6 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission
7 may, by rule, provide for a reciprocal exchange of information with the United States Internal
8 Revenue Service or the revenue service of any other state.

9 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
10 corporate franchise tax, the commission may, by rule, share information gathered from returns and
11 other written statements with the federal government, any other state, any of their political
12 subdivisions, or any political subdivision of this state, except as limited by Sections 59-12-209 and
13 59-12-210, if these political subdivisions or the federal government grant substantially similar
14 privileges to this state.

15 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
16 corporate franchise tax, the commission may, by rule, provide for the issuance of information
17 concerning the identity and other information of taxpayers who have failed to file tax returns or
18 to pay any tax due.

19 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
20 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, any records,
21 returns, and other information filed with the commission under Title 59, Chapter 13, Motor and
22 Special Fuel Tax Act, as requested by the executive secretary.

23 (e) Notwithstanding Subsection (1), but subject to the requirements or restrictions of any
24 applicable federal law, the commission shall provide to the Division of Occupational and
25 Professional Licensing, pursuant to the requirements of Section 58-1-405, any records relevant to
26 the responsibilities of the Division of Occupational and Professional Licensing so long as the
27 confidentiality of those records is maintained by the Division of Occupational and Professional
28 Licensing as otherwise required by this section.

29 (4) Reports and returns shall be preserved for at least three years and then the commission
30 may destroy them.

31 (5) Any person who violates this section is guilty of a class A misdemeanor. If the

- 1 offender is an officer or employee of the state, he shall be dismissed from office and be
- 2 disqualified from holding public office in this state for a period of five years thereafter.
- 3 (6) This part does not apply to the property tax.