

Representative Eric K. Hutchings proposes the following substitute bill:

OCCUPATIONAL LICENSING MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Division of Occupational and Professional Licensing (DOPL) Act.

Highlighted Provisions:

This bill:

- ▶ provides for an individual with a criminal conviction to apply to the Division of Occupational and Professional Licensing for a determination of whether the individual's criminal history would disqualify the individual from receiving a specific occupational or professional license if all other requirements were met;
- ▶ describes the contents of such an application;
- ▶ describes DOPL's responsibilities in responding to such an application; and
- ▶ modifies the definition of "unprofessional conduct."

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 [58-1-501](#), as last amended by Laws of Utah 2018, Chapter 318

27 ENACTS:

28 [58-1-310](#), Utah Code Annotated 1953

29

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

31 Section 1. Section **58-1-310** is enacted to read:

32 **58-1-310. Application for division determination regarding criminal conviction.**

33 (1) An individual with a criminal record may apply to the division at any time for a
34 determination of whether the individual's criminal record would disqualify the individual from
35 obtaining a license in an occupation or profession regulated by this title if the individual has
36 completed or were to complete all other licensing requirements for the occupation or
37 profession.

38 (2) To receive a determination, the individual shall submit the application described in
39 this section in a form prescribed by the division and shall include information regarding:

- 40 (a) the individual's complete criminal conviction history;
- 41 (b) what occupational or professional license the individual is interested in seeking;
- 42 (c) what licensing requirements have been met by the individual;
- 43 (d) what licensing requirements have not yet been met by the individual; and
- 44 (e) any other information required by the division as established by division rule made
45 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

46 (3) The division may charge the individual a fee, established in accordance with
47 Section [63J-1-504](#), to submit an application under this section.

48 (4) Within 30 days of the day on which the division receives a completed application
49 from an individual for a determination under this section, based on the statutory authority and
50 administrative rules governing the occupation or profession at the time of the application, the
51 division shall provide a written determination to the individual of whether the individual's
52 criminal record would disqualify the individual from obtaining a license in an occupation or
53 profession regulated by this title if the individual were to complete all other licensing
54 requirements.

55 (5) If the individual's criminal record would disqualify the individual from obtaining a
56 license in an occupation or profession regulated by this title, the written determination

57 described in Subsection (4) may also include information regarding additional steps the
58 individual could take to qualify for licensure.

59 Section 2. Section **58-1-501** is amended to read:

60 **58-1-501. Unlawful and unprofessional conduct.**

61 (1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful
62 under this title and includes:

63 (a) practicing or engaging in, representing oneself to be practicing or engaging in, or
64 attempting to practice or engage in any occupation or profession requiring licensure under this
65 title if the person is:

66 (i) not licensed to do so or not exempted from licensure under this title; or

67 (ii) restricted from doing so by a suspended, revoked, restricted, temporary,
68 probationary, or inactive license;

69 (b) (i) impersonating another licensee or practicing an occupation or profession under a
70 false or assumed name, except as permitted by law; or

71 (ii) for a licensee who has had a license under this title reinstated following disciplinary
72 action, practicing the same occupation or profession using a different name than the name used
73 before the disciplinary action, except as permitted by law and after notice to, and approval by,
74 the division;

75 (c) knowingly employing any other person to practice or engage in or attempt to
76 practice or engage in any occupation or profession licensed under this title if the employee is
77 not licensed to do so under this title;

78 (d) knowingly permitting the person's authority to practice or engage in any occupation
79 or profession licensed under this title to be used by another, except as permitted by law;

80 (e) obtaining a passing score on a licensure examination, applying for or obtaining a
81 license, or otherwise dealing with the division or a licensing board through the use of fraud,
82 forgery, or intentional deception, misrepresentation, misstatement, or omission; or

83 (f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a
84 drug or device to a person located in this state:

85 (A) without prescriptive authority conferred by a license issued under this title, or by
86 an exemption to licensure under this title; or

87 (B) with prescriptive authority conferred by an exception issued under this title or a

88 multistate practice privilege recognized under this title, if the prescription was issued without
89 first obtaining information, in the usual course of professional practice, that is sufficient to
90 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
91 proposed treatment; and

92 (ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call
93 or cross coverage situation, provided that the person who issues the prescription has
94 prescriptive authority conferred by a license under this title, or is exempt from licensure under
95 this title.

96 (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined
97 as unprofessional conduct under this title or under any rule adopted under this title and
98 includes:

99 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order
100 regulating an occupation or profession under this title;

101 (b) violating, or aiding or abetting any other person to violate, any generally accepted
102 professional or ethical standard applicable to an occupation or profession regulated under this
103 title;

104 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
105 of guilty or nolo contendere which is held in abeyance pending the successful completion of
106 probation with respect to a crime of moral turpitude or any other crime that, when considered
107 with the functions and duties of the occupation or profession for which the license was issued
108 or is to be issued, bears a ~~reasonable~~ substantial relationship to the licensee's or applicant's
109 ability to safely or competently practice the occupation or profession;

110 (d) engaging in conduct that results in disciplinary action, including reprimand,
111 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory
112 authority having jurisdiction over the licensee or applicant in the same occupation or profession
113 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
114 proceedings under Section [58-1-401](#);

115 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
116 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
117 ability of the licensee or applicant to safely engage in the occupation or profession;

118 (f) practicing or attempting to practice an occupation or profession regulated under this

119 title despite being physically or mentally unfit to do so;

120 (g) practicing or attempting to practice an occupation or profession regulated under this
121 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

122 (h) practicing or attempting to practice an occupation or profession requiring licensure
123 under this title by any form of action or communication which is false, misleading, deceptive,
124 or fraudulent;

125 (i) practicing or attempting to practice an occupation or profession regulated under this
126 title beyond the scope of the licensee's competency, abilities, or education;

127 (j) practicing or attempting to practice an occupation or profession regulated under this
128 title beyond the scope of the licensee's license;

129 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
130 conduct connected with the licensee's practice under this title or otherwise facilitated by the
131 licensee's license;

132 (l) acting as a supervisor without meeting the qualification requirements for that
133 position that are defined by statute or rule;

134 (m) issuing, or aiding and abetting in the issuance of, an order or prescription for a
135 drug or device:

136 (i) without first obtaining information in the usual course of professional practice, that
137 is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to
138 the proposed treatment; or

139 (ii) with prescriptive authority conferred by an exception issued under this title, or a
140 multi-state practice privilege recognized under this title, if the prescription was issued without
141 first obtaining information, in the usual course of professional practice, that is sufficient to
142 establish a diagnosis, to identify underlying conditions, and to identify contraindications to the
143 proposed treatment;

144 (n) violating a provision of Section [58-1-501.5](#); or

145 (o) violating the terms of an order governing a license.

146 (3) Unless otherwise specified by statute or administrative rule, in a civil or
147 administrative proceeding commenced by the division under this title, a person subject to any
148 of the unlawful and unprofessional conduct provisions of this title is strictly liable for each
149 violation.