

HB0090S02 compared with HB0090S01

~~text~~ shows text that was in HB0090S01 but was deleted in HB0090S02.

Inserted text shows text that was not in HB0090S01 but was inserted into HB0090S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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;~~and~~
- ▶ describes DOPL's responsibilities in responding to such an application~~;~~ and
- ▶ modifies the definition of "unprofessional conduct."

HB0090S02 compared with HB0090S01

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Laws of Utah 2018, Chapter 318

ENACTS:

58-1-310, Utah Code Annotated 1953

~~{ **58-1-311**, Utah Code Annotated 1953~~

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

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

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

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

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

(a) the individual's complete criminal conviction history;

(b) what occupational or professional license the individual is interested in seeking;

(c) what licensing requirements have been met by the individual;

(d) what licensing requirements have not yet been met by the individual; and

(e) any other information required by the division as established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(4) Within 30 days of the day on which the division receives a completed application from an individual for a determination under this section, based on the statutory authority and

HB0090S02 compared with HB0090S01

administrative rules governing the occupation or profession at the time of the application, the division shall provide a written determination to the individual of whether the individual's criminal record would disqualify the individual from obtaining a license in an occupation or profession regulated by this title if the individual were to complete all other licensing requirements.

(5) If the individual's criminal record would disqualify the individual from obtaining a license in an occupation or profession regulated by this title, the written determination described in Subsection (4) may also include information regarding additional steps the individual could take to qualify for licensure.

Section 2. Section ~~{58-1-311}~~58-1-501 is ~~{enacted}~~amended to read:

~~{~~58-1-311}~~}~~58-1-501.~~{~~Limitation on criminal restrictions for licensure:

~~—~~~~{~~(1) As used in this section, "core"~~}~~Unlawful and unprofessional conduct.

(1) "Unlawful" conduct" means {an action that is necessary to engage in}conduct, by any person, that is defined as unlawful under this title and includes:

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

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

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

(b) (i) impersonating another licensee or practicing an occupation or profession{

~~—~~(2) An applicant for a license for} under a false or assumed name, except as permitted by law; or

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

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

(d) knowingly permitting the person's authority to practice or engage in any occupation

HB0090S02 compared with HB0090S01

or profession licensed under this title to be used by another, except as permitted by law;

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

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

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

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

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

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

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

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated ~~{by}~~ under this title ~~{ may not be disqualified due to a previous conviction for, or current allegation regarding, an offense that does not involve core conduct of the occupation or profession.~~

~~—— (3) If the division denies an application for licensure due to an applicant's criminal history, the division shall demonstrate that the criminal history involved core conduct for};~~

(c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered

HB0090S02 compared with HB0090S01

with the functions and duties of the occupation or profession for which the ~~{applicant}~~ license was ~~{seeking a license.~~

~~—— (4) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing a list of crimes for which an applicant will be denied licensure for each occupation and profession regulated by this title:~~

~~{issued or is to be issued, bears a [reasonable] substantial relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;~~

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

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

~~(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;~~

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

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

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

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

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

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

HB0090S02 compared with HB0090S01

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

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

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

(n) violating a provision of Section 58-1-501.5; or

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

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