

OCCUPATIONAL LICENSING MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Karen Mayne

Cosponsors:	Lee B. Perry	Mike Winder
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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

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-1-501**, as last amended by Laws of Utah 2018, Chapter 318

31 ENACTS:

32 **58-1-310**, Utah Code Annotated 1953



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

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

36 **58-1-310. Application for division determination regarding criminal conviction.**

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

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

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

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

52 (4) Within 30 days of the day on which the division receives a completed application
53 from an individual for a determination under this section, based on the statutory authority and
54 administrative rules governing the occupation or profession at the time of the application, the

55 division shall provide a written determination to the individual of whether the individual's
56 criminal record would disqualify the individual from obtaining a license in an occupation or
57 profession regulated by this title if the individual were to complete all other licensing
58 requirements.

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

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

64 **58-1-501. Unlawful and unprofessional conduct.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea

109 of guilty or nolo contendere which is held in abeyance pending the successful completion of
110 probation with respect to a crime of moral turpitude or any other crime that, when considered
111 with the functions and duties of the occupation or profession for which the license was issued
112 or is to be issued, bears a [reasonable] substantial relationship to the licensee's or applicant's
113 ability to safely or competently practice the occupation or profession;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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