

CONSTRUCTION TRADES LICENSING PENALTY

PERIODS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: D. Gregg Buxton

LONG TITLE

General Description:

This bill amends a provision related to unlawful conduct for a person licensed in a construction trade.

Highlighted Provisions:

This bill:

- prohibits the division from treating unlawful conduct by a licensee as a subsequent violation of a previous unlawful conduct violation if a certain amount of time has passed since the previous violation; and

- allows the division to treat multiple of the same type of unlawful conduct violation as separate violations.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-503, as last amended by Laws of Utah 2014, Chapter 188

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

Section 1. Section **58-55-503** is amended to read:

58-55-503. Penalty for unlawful conduct -- Citations.

(1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.

(ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of a licensee's license by the division and the commission include:

(a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and

(b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

(i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;

(ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary

58 action is appropriate, the director or the director's designee from within the division shall
59 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
60 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
61 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

62 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
63 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
64 (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a
65 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be
66 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered
67 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),
68 (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

69 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
70 58-55-401 may not be assessed through a citation.

71 (b) (i) A citation shall be in writing and describe with particularity the nature of the
72 violation, including a reference to the provision of the chapter, rule, or order alleged to have
73 been violated.

74 (ii) A citation shall clearly state that the recipient must notify the division in writing
75 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
76 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

77 (iii) A citation shall clearly explain the consequences of failure to timely contest the
78 citation or to make payment of any fines assessed by the citation within the time specified in
79 the citation.

80 (c) A citation issued under this section, or a copy of a citation, may be served upon a
81 person upon whom a summons may be served:

82 (i) in accordance with the Utah Rules of Civil Procedure;

83 (ii) personally or upon the person's agent by a division investigator or by a person
84 specially designated by the director; or

85 (iii) by mail.

(d) (i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

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

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

(g) A citation may not be issued under this section after the expiration of six months following the occurrence of a violation.

(h) ~~[The]~~ Except as provided in Subsection (5), the director or the director's designee shall assess a fine in accordance with the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.

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

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2);

or

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

(II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent

violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

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

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25) for each individual is considered a separate violation.

(5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

~~[(5)]~~ (7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

(b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

142 (c) A county attorney or the attorney general of the state is to provide legal assistance
143 and advice to the director in any action to collect the penalty.

144 (d) In an action brought to enforce the provisions of this section, the court shall award
145 reasonable attorney fees and costs to the prevailing party.