

1 **STATUS VERIFICATION SYSTEM AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Construction Trades Licensing Act to address a reference to
10 status verification system.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies a reference to a status verification system; and
- 14 ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21 **58-55-503**, as last amended by Laws of Utah 2011, Chapters 195, 340, and 413

22

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

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

25 **58-55-503. Penalty for unlawful conduct -- Citations.**

26 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
27 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), or (26), or Subsection



28 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
29 guilty of a class A misdemeanor.

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

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

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

39 (3) Grounds for immediate suspension of the licensee's license by the division and the
40 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
41 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
42 report to, or notify the division with respect to any matter for which application, notification, or
43 reporting is required under this chapter or rules adopted under this chapter, including applying
44 to the division for a new license to engage in a new specialty classification or to do business
45 under a new form of organization or business structure, filing with the division current
46 financial statements, notifying the division concerning loss of insurance coverage, or change in
47 qualifier.

48 (4) (a) If upon inspection or investigation, the division concludes that a person has
49 violated the provisions of Subsection 58-55-308(2) or [~~Subsections~~] Subsection 58-55-501(1),
50 (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), or (26), or Subsection
51 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
52 action is appropriate, the director or the director's designee from within the division shall
53 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
54 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
55 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

56 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
57 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), or (26),
58 or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or

59 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
60 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from
61 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),
62 (21), (24), (25), or (26), or Subsection 58-55-504(2).

63 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
64 58-55-401 may not be assessed through a citation.

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

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

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

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

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

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

79 (iii) by mail.

80 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
81 citation was issued fails to request a hearing to contest the citation, the citation becomes the
82 final order of the division and is not subject to further agency review.

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

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

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

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

90 (h) The director or the director's designee shall assess a fine in accordance with the
91 following:

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

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

94 and

95 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
96 \$2,000 for each day of continued offense.

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

99 (A) the division previously issued a final order determining that a person committed a
100 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
101 (3), (9), (10), (12), (14), (19), (24), (25), or (26), or Subsection 58-55-504(2); or

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

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

105 (III) the division determines during an investigation that occurred after the initiation of
106 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
107 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
108 (10), (12), (14), (19), (24), (25), or (26), or Subsection 58-55-504(2); and

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

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

114 (j) In addition to any other licensure sanction or fine imposed under this section, the
115 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
116 two or more times within a 12-month period, unless, with respect to a violation of Subsection
117 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
118 legal working status of the individual who was the subject of the violation using a federal status
119 verification system[~~as defined in Section 13-47-102~~] that is an electronic system operated by
120 the federal government through which an employer may inquire to verify the federal legal

121 working status of an individual or a similar program.

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

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

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

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

132 (d) In an action brought to enforce the provisions of this section, reasonable attorney
133 fees and costs shall be awarded.

Legislative Review Note
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Office of Legislative Research and General Counsel