

## Part 5

### Unlawful Conduct - Unprofessional Conduct - Penalties

#### **58-63-501 Unlawful conduct.**

"Unlawful conduct" includes:

- (1) a contract security company employing the services of an unlicensed armed private security officer or unarmed private security officer, except as provided under Section 58-63-304 or 58-63-310;
- (2) an armored car company employing the services of an unlicensed armored car security officer, except as provided under Section 58-63-304 or 58-63-310;
- (3) filing with the division fingerprint cards for an applicant that are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the qualifications of the applicant for licensure;
- (4) practicing or engaging in, or attempting to practice or engage in, activity for which a license is required under this chapter, unless the individual:
  - (a) holds the appropriate license under this chapter; or
  - (b) is exempted from licensure as provided under Section 58-63-304 or 58-63-310; and
- (5) knowingly employing another person to engage in or practice or attempt to engage in or practice an occupation or profession licensed under this chapter, if the employee:
  - (a) is not licensed to do so under this chapter; or
  - (b) is not exempt from licensure.

Amended by Chapter 246, 2008 General Session

#### **58-63-502 Unprofessional conduct.**

"Unprofessional conduct" includes:

- (1) failing as an armored car company or a contract security company to notify the division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent, as required under Section 58-63-306;
- (2) failing as an armed private security officer, armored car security officer, or unarmed private security officer, to carry or display a copy of the licensee's license as required under Section 58-63-308;
- (3) employment by an armored car company or a contract security company of a qualifying agent, armed private security officer, armored car security officer, or unarmed private security officer knowing that the individual has engaged in conduct that is inconsistent with the duties and responsibilities of a licensee under this chapter; and
- (4) failing to comply with operating standards established by rule.

Amended by Chapter 246, 2008 General Session

#### **58-63-503 Penalties.**

- (1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-63-501 or who fails to comply with a citation issued under this section after it becomes final is guilty of a class A misdemeanor.
- (2) The division may immediately suspend a license issued under this chapter of a person who is given a citation for violating Subsection 58-63-501(1), (2), (4), or (5).
- (3)

- (a) If upon inspection or investigation, the division determines that a person has violated Subsection 58-63-501(1), (2), (4), or (5) or any rule made or order issued under those subsections, and that disciplinary action is warranted, the director or the director's designee within the division shall promptly issue a citation to the person and:
  - (i) attempt to negotiate a stipulated settlement; or
  - (ii) notify the person to appear for an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
- (b)
  - (i) The division may fine a person who violates Subsection 58-63-501(1), (2), (4), or (5), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a violation in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to cease and desist from the violation, or do both.
  - (ii) Except for a cease and desist order, the division may not impose the licensure sanctions listed in Section 58-63-401 through the issuance of a citation under this section.
- (c) The written citation shall:
  - (i) describe the nature of the violation, including a reference to the allegedly violated statute, rule, or order;
  - (ii) state the recipient must notify the division in writing within 20 calendar days of issuance of the citation if the recipient wants to contest the citation at the adjudicative proceeding referred to in Subsection (3)(a)(ii); and
  - (iii) explain the consequences of failure to timely contest the citation or to make payment of a fine assessed under the citation with the time specified in the citation.
- (d)
  - (i) The division may serve a citation issued under this section, or a copy of the citation, upon an individual who is subject to service of a summons under the Utah Rules of Civil Procedure.
  - (ii)
    - (A) The division may serve the individual personally or serve the individual's agent.
    - (B) The division may serve the summons by a division investigator, by a person designated by the director, or by mail.
- (e)
  - (i) If within 20 days from the service of a citation 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 division may grant an extension of the 20-day period for cause.
- (f) 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.
- (g) The division may not issue a citation for an alleged violation under this section after the expiration of six months following the occurrence of the alleged violation.
- (h) The director or the director's designee may assess fines under this section as follows:
  - (i) for a first offense under Subsection (3)(a), a fine of up to \$1,000;
  - (ii) for a second offense under Subsection (3)(a), a fine of up to \$2,000; and
  - (iii) for a subsequent offense under Subsection (3)(a), a fine of up to \$2,000 for each day of continued violation.
- (i)
  - (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (3)(h), an offense is 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 58-63-501(1) or (4); or

(B)

- (I) the division initiated an action for a first or second offense;
- (II) no final order has been issued by the division in an action initiated under Subsection (3)(i)(i)(B)(I);
- (III) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent violation of Subsection 58-63-501(1) or (4); and
- (IV) after determining that the person committed a second or subsequent offense under Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (3)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (3)(i)(i), the division shall comply with the requirements of this section.

(4)

- (a) The division shall deposit a fine imposed by the director under Subsection (3)(h) in the General Fund as a dedicated credit for use by the division for the purposes listed in Section 58-63-103.
- (b) The director may collect a Subsection (3)(h) fine which is not paid by:
  - (i) referring the matter to the Office of State Debt Collection or a collection agency; or
  - (ii) bringing an action in the district court of the county in which the person resides or in the county where the office of the director is located.
- (c) The director may seek legal assistance from the attorney general or the county or district attorney of the district in which the action is brought to collect the fine.
- (d) The court shall award reasonable attorney fees and costs to the division for successful actions under Subsection (4)(b)(ii).

Amended by Chapter 246, 2008 General Session

Amended by Chapter 382, 2008 General Session