

UNPROFESSIONAL CONDUCT IN CONSTRUCTION TRADE

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Raymond W. Short

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING;
CLARIFYING THE UNLAWFUL CONDUCT PROVISIONS RELATING TO THE
CONSTRUCTION TRADE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-55-503, as last amended by Chapter 10, Laws of Utah 1997

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) Any person who violates Subsections 58-55-501(1) through (14), (16), (17) or (18), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) or (13) may not be awarded and may not accept a contract for the performance of the work. Any licensee who submits a notice of intent to request an increase in the monetary limit under Subsection 58-55-309(5), but who is not granted an increase sufficient to cover the award of a contract upon which he has bid, may not be awarded and may not accept the contract.

(2) Any person who violates the provisions of Subsection 58-55-501(15) 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 the licensee's license by the division and the board include 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 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,

filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a [~~contractor~~] person has violated the provisions of Subsections 58-55-501(1), (2), (3), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the [~~contractor~~] person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the [~~contractor~~] person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), or (3), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-501(1), (2), or (3).

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

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar 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. The period to contest a citation may be extended by the division 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 failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) Fines shall be assessed by the director or his designee according to 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.

(j) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(i), 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 58-55-501(1), (2), or (3); 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 the action initiated under Subsection (4)(j)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(j)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-501(1), (2), or (3); and

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

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(j)(i), the

division shall comply with the requirements of this section.

(5) Any penalty imposed by the director under Subsection (4)(i) shall be deposited into the Commerce Service Fund. Any penalty which 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. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.