

28 (3) "Approved supervision" means the immediate supervision of apprentices by qualified
29 licensed electricians or plumbers as a part of a planned program of training.

30 (4) "Board" means the Contractors Licensing Board, Electrician Licensing Board, or
31 Plumbers Licensing Board created in Section 58-55-201.

32 (5) "Construction trade" means any trade or occupation involving construction, alteration,
33 remodeling, repairing, wrecking or demolition, addition to, or improvement of any building,
34 highway, road, railroad, dam, bridge, structure, excavation or other project, development, or
35 improvement to other than personal property.

36 (6) "Construction trades instructor" means a person licensed under this chapter to teach
37 one or more construction trades in both a classroom and project environment, where a project is
38 intended for sale to or use by the public and is completed under the direction of an instructor who
39 has no economic interest in the project.

40 (7) "Contractor" means any person who for compensation other than wages as an employee
41 undertakes any work in the construction, plumbing, or electrical trade for which licensure is
42 required under this chapter and includes:

43 (a) a person who builds any structure on his own property for the purpose of sale or who
44 builds any structure intended for public use on his own property;

45 (b) any person who represents himself to be a contractor by advertising or any other means;

46 (c) any person engaged as a maintenance person, other than an employee, who regularly
47 engages in activities set forth under the definition of "construction trade";

48 (d) any person engaged in any construction trade for which licensure is required under this
49 chapter; or

50 (e) a construction manager who performs management and counseling services on a
51 construction project for a fee.

52 (8) (a) "Electrical trade" means the performance of any electrical work involved in the
53 installation, construction, alteration, change, repair, removal, or maintenance of facilities,
54 buildings, or appendages or appurtenances.

55 (b) "Electrical trade" does not include:

56 (i) transporting or handling electrical materials;

57 (ii) preparing clearance for raceways for wiring; or

58 (iii) work commonly done by unskilled labor or any installations under the exclusive

59 control of electrical utilities.

60 (c) For purposes of Subsection (8)(b):

61 (i) no more than one unlicensed person may be so employed unless more than five licensed
62 electricians are employed by the shop; and

63 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted
64 by this Subsection (8)(c).

65 (9) "Employee" means an individual as defined by the division by rule giving consideration
66 to the definition adopted by the Internal Revenue Service and the Department of Workforce
67 Services.

68 (10) "Engage in a construction trade" means to:

69 (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in
70 a construction trade; or

71 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person to
72 believe one is or will act as a contractor.

73 (11) "Financial responsibility" means a demonstration of a current and expected future
74 condition of financial solvency evidencing a reasonable expectation to the division and the board
75 that an applicant or licensee can successfully engage in business as a contractor without jeopardy
76 to the public health, safety, and welfare. Financial responsibility may be determined by an
77 evaluation of the total history concerning the licensee or applicant including past, present, and
78 expected condition and record of financial solvency and business conduct.

79 (12) "General building contractor" means a person licensed under this chapter as a general
80 building contractor qualified by education, training, experience, and knowledge to perform or
81 superintend construction of structures for the support, shelter, and enclosure of persons, animals,
82 chattels, or movable property of any kind or any of the components of that construction except
83 plumbing, electrical, and mechanical, for which the general building contractor shall employ the
84 services of a contractor licensed in the particular specialty, except that a general building
85 contractor engaged in the construction of single-family and multifamily residences up to four units
86 may perform the mechanical and hire a licensed plumber or electrician as an employee. The
87 division may by rule exclude general building contractors from engaging in the performance of
88 other construction specialties in which there is represented a substantial risk to the public health,
89 safety, and welfare, and for which a license is required unless that general building contractor

90 holds a valid license in that specialty classification.

91 (13) "General engineering contractor" means a person licensed under this chapter as a
92 general engineering contractor qualified by education, training, experience, and knowledge to
93 perform construction of fixed works in any or all of the following: irrigation, drainage, water,
94 power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels,
95 airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants
96 requiring specialized engineering knowledge and skill, piers, and foundations, or any of the
97 components of those works. However, a general engineering contractor may not perform
98 construction of structures built primarily for the support, shelter, and enclosure of persons,
99 animals, and chattels.

100 (14) "Immediate supervision" means reasonable direction, oversight, inspection, and
101 evaluation of the work of a person, in or out of the immediate presence of the supervising person,
102 so as to ensure that the end result complies with applicable standards.

103 (15) "Individual" means a natural person.

104 (16) "Journeyman electrician" means a person licensed under this chapter as a journeyman
105 electrician having the qualifications, training, experience, and knowledge to wire, install, and
106 repair electrical apparatus and equipment for light, heat, power, and other purposes.

107 (17) "Journeyman plumber" means a person licensed under this chapter as a journeyman
108 plumber having the qualifications, training, experience, and technical knowledge to engage in the
109 plumbing trade.

110 (18) "Master electrician" means a person licensed under this chapter as a master electrician
111 having the qualifications, training, experience, and knowledge to properly plan, layout, and
112 supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat,
113 power, and other purposes.

114 ~~[(19) "Monetary limit" means the limit established by the division under Section~~
115 ~~58-55-309.]~~

116 ~~[(20) "Percentage of completion on a contract" is the percentage obtained by dividing costs~~
117 ~~to date by total estimated costs and multiplying by 100. Unless otherwise specified by rule,~~
118 ~~specific application of this definition shall be based upon the "cost-to-cost method" provided in~~
119 ~~the 1990 edition of the "Audit and Accounting Guide for Construction Contractors," Appendix D,~~
120 ~~published by the American Institute of Certified Public Accountants. The division may, upon~~

121 request or upon its own action, establish an alternate generally recognized method of calculation
122 to determine percentage of completion, if the method is appropriate to the licensee's or applicant's
123 accounting procedures.]

124 [(21)] (19) "Person" means a natural person, sole proprietorship, joint venture, corporation,
125 limited liability company, association, or organization of any type.

126 [(22)] (20) "Plumbing trade" means the performance of any mechanical work pertaining
127 to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within
128 three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the
129 water supply, discharge of liquid and water carried waste, or the building drainage system within
130 the walls of the building. It includes that work pertaining to the water supply, distribution pipes,
131 fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains
132 together with their devices, appurtenances, and connections where installed within the outside
133 walls of the building.

134 [(23)] (21) "Ratio of apprentices" means, for the purpose of determining compliance with
135 the requirements for planned programs of training and electrician apprentice licensing applications,
136 the shop ratio of apprentice electricians to journeyman or master electricians shall be one
137 journeyman or master electrician to one apprentice on industrial and commercial work, and one
138 journeyman or master electrician to three apprentices on residential work. All on-the-job training
139 shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with
140 a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on
141 residential projects.

142 [(24)] (22) "Residential and small commercial contractor" means a person licensed under
143 this chapter as a residential and small commercial contractor qualified by education, training,
144 experience, and knowledge to perform or superintend the construction of single-family residences,
145 multifamily residences up to four units, and commercial construction of not more than three stories
146 above ground and not more than 20,000 square feet, or any of the components of that construction
147 except plumbing, electrical, and mechanical, for which the residential and small commercial
148 contractor shall employ the services of a contractor licensed in the particular specialty, except that
149 a residential and small commercial contractor engaged in the construction of single-family and
150 multifamily residences up to four units may perform the mechanical work and hire a licensed
151 plumber or electrician as an employee.

152 [~~(25)~~] (23) "Residential apprentice plumber" means a person licensed under this chapter
153 as a residential apprentice plumber who is learning the residential plumbing trade while working
154 on residential buildings under the approved supervision of a residential journeyman plumber or
155 a journeyman plumber.

156 [~~(26)~~] (24) "Residential building," as it relates to the license classification of residential
157 apprentice plumber and residential journeyman plumber, means a single or multiple family
158 dwelling of up to four units.

159 [~~(27)~~] (25) "Residential journeyman electrician" means a person licensed under this
160 chapter as a residential journeyman electrician having the qualifications, training, experience, and
161 knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and
162 other purposes on buildings using primarily nonmetallic sheath cable.

163 [~~(28)~~] (26) "Residential journeyman plumber" means a person licensed under this chapter
164 as a residential journeyman plumber having the qualifications, training, experience, and knowledge
165 to engage in the plumbing trade as limited to the plumbing of residential buildings.

166 [~~(29)~~] (27) "Residential master electrician" means a person licensed under this chapter as
167 a residential master electrician having the qualifications, training, experience, and knowledge to
168 properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and
169 equipment for light, heat, power, and other purposes on residential projects.

170 [~~(30)~~] (28) "Residential project," as it relates to an electrician or electrical contractor,
171 means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard
172 rules and regulations governing this work, including the National Electrical Code, and in which
173 the voltage does not exceed 250 volts line to line and 125 volts to ground.

174 [~~(31)~~] (29) "Specialty contractor" means a person licensed under this chapter under a
175 specialty contractor classification established by rule, who is qualified by education, training,
176 experience, and knowledge to perform those construction trades and crafts requiring specialized
177 skill the regulation of which are determined by the division to be in the best interest of the public
178 health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than
179 those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

180 [~~(32)~~] (30) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

181 [~~(33)~~] (31) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502
182 and as may be further defined by rule.

183 ~~[(34)]~~ (32) "Wages" means all amounts due an employee for labor or services whether the
184 amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the
185 amount.

186 ~~[(35)]~~ "Work in process" means all unfinished work under verbal or written contract,
187 whether in or out of Utah, regardless of whether licensure is required under this chapter, for which
188 costs have accrued or been realized. The value of unfinished work on a contract shall be
189 determined by expressing the current percentage of completion as a decimal fraction, subtracting
190 it from 1.00 and multiplying the difference by the total dollar amount of the contract.]

191 Section 2. Section **58-55-306** is amended to read:

192 **58-55-306. Financial responsibility.**

193 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or
194 reinstatement of a contractor's license shall demonstrate to the division and the board the
195 applicant's or licensee's financial responsibility before the issuance of or the renewal ~~[of a license.~~
196 ~~The burden to demonstrate financial responsibility is upon the applicant or licensee.]~~ or
197 reinstatement of a license by:

198 ~~[(2)]~~ Evidence of financial responsibility shall be demonstrated by providing the division
199 with a license bond, cash deposit, financial statements prepared by an independent certified public
200 accountant, or by division review of the applicant's or licensee's financial statements, at the option
201 of the licensee, and in accordance with provisions defined by rule.]

202 ~~[(3)]~~ The financial responsibility of a corporation shall be established independently of and
203 without reliance upon the assets or guarantees of its officers, directors, and stockholders, but upon
204 a showing of reasonable need, the division and board may inquire into the financial responsibility
205 of the corporation's officers and directors as a criterion in determining the corporation's financial
206 responsibility.]

207 (a) (i) completing a questionnaire developed by the division; and

208 (ii) signing the questionnaire, certifying that the information provided is true and accurate;

209 or

210 (b) submitting a bond or cash deposit in an amount and form determined by the division.

211 (2) The division may audit an applicant's or licensee's demonstration of financial
212 responsibility on a random basis or upon finding of a reasonable need.

213 Section 3. Section **58-55-402** is amended to read:

214 **58-55-402. Investigation of regulated activity.**

215 (1) The division shall be responsible for the investigation of persons and activities in
216 violation of the provisions of this chapter.

217 (2) Investigation by the division shall include investigations of:

218 (a) licensees engaged in unlawful or unprofessional conduct; and

219 (b) unlicensed persons engaged in the conduct of activity or work regulated under this
220 chapter and for which a license is required.

221 (3) The division shall decline to proceed with investigation of the violation of any
222 provisions of this chapter if the division finds there is no apparent material jeopardy to the public
223 health, safety, and welfare.

224 (4) The division shall have no responsibility for the inspection of construction work
225 performed in the state to determine compliance with applicable codes, or industry and
226 workmanship standards, except as provided in Subsections 58-1-501(2)(g), 58-55-502(2), (3), and
227 (4), and 58-55-501[~~(16)~~] (14).

228 (5) Authorized representatives of the division shall be permitted to enter upon the premises
229 or site of work regulated under this chapter for the purpose of determining compliance with the
230 provisions of this chapter.

231 Section 4. Section **58-55-403** is amended to read:

232 **58-55-403. Minimum time for division action.**

233 [~~1~~] The division has at least five working days after receiving an application for licensure
234 to determine whether to issue a license under this chapter.

235 [~~2~~] Except as provided in Subsection (3), the division has at least five working days after
236 receiving a request for a change in the monetary limit to determine whether to grant the change.]

237 [~~3~~] The division shall approve or deny a request for an increase in the monetary limit
238 within five working days after receiving the request if the licensee filed, within five working days
239 before submitting the request to the division, a notice of intent to request an increase under
240 Subsection 58-55-309(5).]

241 Section 5. Section **58-55-501** is amended to read:

242 **58-55-501. Unlawful conduct.**

243 Unlawful conduct includes:

244 (1) engaging in a construction trade, acting as a contractor, or representing oneself to be

245 engaged in a construction trade or to be acting as a contractor in a construction trade requiring
246 licensure, unless the person doing any of these is appropriately licensed or exempted from
247 licensure under this chapter;

248 (2) acting in a construction trade beyond the scope of the license held;

249 (3) hiring or employing in any manner an unlicensed person, other than an employee for
250 wages who is not required to be licensed under this chapter, to engage in a construction trade for
251 which licensure is required or to act as a contractor or subcontractor in a construction trade
252 requiring licensure;

253 (4) applying for or obtaining a building permit either for oneself or another when not
254 licensed or exempted from licensure as a contractor under this chapter;

255 (5) issuing a building permit to any person for whom there is no evidence of a current
256 license or exemption from licensure as a contractor under this chapter;

257 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other
258 person who is required to be licensed under this chapter but who is not licensed or is otherwise not
259 entitled to obtain or receive the benefit of the building permit;

260 (7) failing to obtain a building permit when required by law or rule;

261 (8) submitting a bid for any work for which a license is required under this chapter by a
262 person not licensed or exempted from licensure as a contractor under this chapter;

263 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with
264 an application to obtain or renew a license under this chapter;

265 (10) allowing one's license to be used by another except as provided by statute or rule;

266 (11) doing business under a name other than the name appearing on the license, except as
267 permitted by statute or rule;

268 [~~(12) exceeding one's monetary limit as a licensed contractor, as the limit is defined by~~
269 ~~statute or rule;~~]

270 [~~(13) if licensed as a contractor, submitting a bid on a single project in an amount~~
271 ~~exceeding his monetary limit, unless he first files with the division a notice of intent to request an~~
272 ~~increase of the monetary limit in compliance with Subsection 58-55-309(5);]~~

273 [~~(14)~~ (12) if licensed as a journeyman plumber, residential journeyman plumber,
274 journeyman electrician, master electrician, or residential electrician, failing to directly supervise
275 an apprentice under one's supervision or exceeding the number of apprentices one is allowed to

276 have under his supervision;

277 ~~[(15)]~~ (13) if licensed as a contractor or representing oneself to be a contractor, receiving
278 any funds in payment for a specific project from an owner or any other person, which funds are
279 to pay for work performed or materials and services furnished for that specific project, and after
280 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
281 amounts due and payable to persons who performed work or furnished materials or services within
282 a reasonable period of time;

283 ~~[(16)]~~ (14) if licensed under this chapter, willfully or deliberately disregarding or violating:

- 284 (a) the building or construction laws of this state or any political subdivision;
- 285 (b) the safety and labor laws applicable to a project;
- 286 (c) any provision of the health laws applicable to a project;
- 287 (d) the workers' compensation insurance laws of the state applicable to a project;
- 288 (e) the laws governing withholdings for employee state and federal income taxes,
- 289 unemployment taxes, FICA, or other required withholdings; or

290 (f) reporting, notification, and filing laws of this state or the federal government;

291 ~~[(17)]~~ (15) aiding or abetting any person in evading the provisions of this chapter or rules
292 established under the authority of the division to govern this chapter; or

293 ~~[(18)]~~ (16) engaging in the construction trade or as a contractor for the construction of
294 residences of up to two units when not currently registered or exempt from registration as a
295 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
296 Fund Act.

297 Section 6. Section **58-55-503** is amended to read:

298 **58-55-503. Penalty for unlawful conduct -- Citations.**

299 (1) Any person who violates Subsections 58-55-501(1) through ~~(12),~~ (14), ~~(15), or~~ (16)~~[-~~
300 ~~(17) or (18)]~~, or who fails to comply with a citation issued under this section after it is final, is
301 guilty of a class A misdemeanor. Any person who violates the provisions of Subsection
302 58-55-501(8) ~~[or (13)]~~ may not be awarded and may not accept a contract for the performance of
303 the work. ~~[Any licensee who submits a notice of intent to request an increase in the monetary limit~~
304 ~~under Subsection 58-55-309(5), but who is not granted an increase sufficient to cover the award~~
305 ~~of a contract upon which he has bid, may not be awarded and may not accept the contract.]~~

306 (2) Any person who violates the provisions of Subsection 58-55-501~~[(15)]~~(13) is guilty

307 of an infraction unless the violator did so with the intent to deprive the person to whom money is
308 to be paid of the money received, in which case the violator is guilty of theft, as classified in
309 Section 76-6-412.

310 (3) Grounds for immediate suspension of the licensee's license by the division and the
311 board include the failure by a licensee to make application to, report to, or notify the division with
312 respect to any matter for which application, notification, or reporting is required under this chapter
313 or rules adopted under this chapter, including applying to the division for a new license to engage
314 in a new specialty classification or to do business under a new form of organization or business
315 structure, filing with the division current financial statements, notifying the division concerning
316 loss of insurance coverage, or change in qualifier.

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

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

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

331 (b) Each citation shall be in writing and describe with particularity the nature of the
332 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
333 violated. The citation shall clearly state that the recipient must notify the division in writing within
334 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
335 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
336 explain the consequences of failure to timely contest the citation or to make payment of any fines
337 assessed by the citation within the time specified in the citation.

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

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

343 (e) If within 20 calendar days from the service of a citation, the person to whom the
344 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
345 order of the division and is not subject to further agency review. The period to contest a citation
346 may be extended by the division for cause.

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

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

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

353 (i) Fines shall be assessed by the director or his designee according to the following:

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

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

356 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
357 \$2,000 for each day of continued offense.

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

360 (A) the division previously issued a final order determining that a person committed a first
361 or second offense in violation of Subsection 58-55-501(1), (2), or (3); or

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

363 (II) no final order has been issued by the division in the action initiated under Subsection
364 (4)(j)(i)(B)(I);

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

368 (IV) after determining that the person committed a second or subsequent offense under

369 Subsection (4)(j)(i)(B)(III), the division issues a final order on the action initiated under Subsection
370 (4)(j)(i)(B)(I).

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

373 (5) Any penalty imposed by the director under Subsection (4)(i) shall be deposited into the
374 Commerce Service Fund. Any penalty which is not paid may be collected by the director by either
375 referring the matter to a collection agency or bringing an action in the district court of the county
376 in which the person against whom the penalty is imposed resides or in the county where the office
377 of the director is located. Any county attorney or the attorney general of the state is to provide
378 legal assistance and advice to the director in any action to collect the penalty. In any action
379 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
380 awarded.

381 Section 7. **Repealer.**

382 This act repeals:

383 Section **58-55-309, Monetary limit.**

Legislative Review Note
as of 2-1-00 10:30 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel