

Representative Loraine T. Pace proposes to substitute the following bill:

UTAH CONSTRUCTION TRADES LICENSING

ACT AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Loraine T. Pace

This act modifies the Utah Construction Trades Licensing Act by amending the penalty provisions for unlawful conduct.

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

AMENDS:

58-55-503, as last amended by Chapters 100, 233 and 317, Laws of Utah 2000

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), (2), (3), (4), (5), (6), (7), (9), (10), (12), [~~or (17)~~] (14), or (15), 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) may not be awarded and may not accept a contract for the performance of the work.

(2) Any 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 the licensee's license by the division and the board include the issuance of a citation for violation of Section 58-55-501 or the failure by a licensee to make application to, report to, or notify the division with respect to any matter for



26 which application, notification, or reporting is required under this chapter or rules adopted under
27 this chapter, including applying to the division for a new license to engage in a new specialty
28 classification or to do business under a new form of organization or business structure, filing with
29 the division current financial statements, notifying the division concerning loss of insurance
30 coverage, or change in qualifier.

31 (4) (a) If upon inspection or investigation, the division concludes that a person has violated
32 the provisions of Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), or any rule or order
33 issued with respect to these subsections, and that disciplinary action is appropriate, the director or
34 his designee from within the division for each alternative respectively, shall, promptly issue a
35 citation to the person according to this chapter and any pertinent rules, attempt to negotiate a
36 stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted
37 under Title 63, Chapter 46b, Administrative Procedures Act.

38 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3),
39 (9), (10), (12), or (14), as evidenced by an uncontested citation, a stipulated settlement, or by a
40 finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
41 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating
42 Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14).

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

45 (b) Each citation shall be in writing and describe with particularity the nature of the
46 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
47 violated. The citation shall clearly state that the recipient must notify the division in writing within
48 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
49 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
50 explain the consequences of failure to timely contest the citation or to make payment of any fines
51 assessed by the citation within the time specified in the citation.

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

56 (d) If within 20 calendar days from the service of a citation, the person to whom the

57 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
58 order of the division and is not subject to further agency review. The period to contest a citation
59 may be extended by the division for cause.

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

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

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

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

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

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

69 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
70 \$2,000 for each day of continued offense.

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

73 (A) the division previously issued a final order determining that a person committed a first
74 or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14); or

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

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

78 (III) the division determines during an investigation that occurred after the initiation of the
79 action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent violation
80 of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14); and

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

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

86 (5) Any penalty imposed by the director under Subsection (4) (h) shall be deposited into
87 the Commerce Service Fund. Any penalty which is not paid may be collected by the director by

88 either referring the matter to a collection agency or bringing an action in the district court of the
89 county in which the person against whom the penalty is imposed resides or in the county where
90 the office of the director is located. Any county attorney or the attorney general of the state is to
91 provide legal assistance and advice to the director in any action to collect the penalty. In any
92 action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall
93 be awarded.