

**NATURAL GAS TECHNICIAN
CERTIFICATION**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Gordon E. Snow

Eric K. Hutchings

This act modifies the Construction Trades Licensing Act. The act provides that a person that installs or repairs a residential or commercial natural gas appliance or a combustion system must become certified, with some exemptions. The act modifies certain exemptions from licensure. The act adds and modifies definitions. The act modifies unlawful conduct penalty provisions. The act makes technical changes.

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

AMENDS:

58-55-102, as last amended by Chapters 233 and 317, Laws of Utah 2000

58-55-305, as last amended by Chapter 227, Laws of Utah 2001

58-55-308, as last amended by Chapter 317, Laws of Utah 2000

58-55-503, as last amended by Chapters 198 and 361, Laws of Utah 2001

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

Section 1. Section **58-55-102** is amended to read:

58-55-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) (a) "Alarm business or company" means a person engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system.

(b) "Alarm business or company" does not include the activities of:

(i) a person engaged in the manufacture and sale of alarm systems when that person is not engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring of alarm systems, and the manufacture or sale occurs only at a place of business established by the person engaged in the manufacture or sale and does not involve site visits at the place or intended place of installation of an alarm system; or

(ii) an owner of an alarm system, or an employee of the owner of an alarm system who is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of the alarm system owned by that owner.

(2) "Alarm company agent" means any individual employed within this state by a person engaged in the alarm business.

(3) "Alarm system" means equipment and devices assembled for the purpose of:

- (a) detecting and signaling unauthorized intrusion or entry into or onto certain premises; or
- (b) signaling a robbery or attempted robbery on protected premises.

(4) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under approved supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.

(5) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under approved supervision of a journeyman plumber.

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

(7) "Board" means the Contractors Licensing Board, Electrician Licensing Board, Alarm System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

(8) "Combustion system" means an assembly consisting of components with a means for conveying natural gas from the shutoff valve of the piping system nearest the gas appliance to the burner and includes electric control and combustion air supply and venting systems, either continuously or intermittently, and that incorporates components intended to achieve control of quantity, flow, and pressure.

~~[(8)]~~ (9) "Construction trade" means any trade or occupation involving:

(a) construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property[-:]; or

(b) installation or repair of a residential or commercial natural gas appliance or a combustion system.

~~[(9)]~~ (10) "Construction trades instructor" means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of an instructor who has no economic interest in the project.

~~[(10)]~~ (11) (a) "Contractor" means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

- (i) a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;
 - (ii) any person who represents himself to be a contractor by advertising or any other means;
 - (iii) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";
 - (iv) any person engaged in any construction trade for which licensure is required under this chapter; or
 - (v) a construction manager who performs management and counseling services on a construction project for a fee.
- (b) "Contractor" does not include an alarm company or alarm company agent.

~~[(11)]~~ (12) (a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

- (b) "Electrical trade" does not include:
- (i) transporting or handling electrical materials;
 - (ii) preparing clearance for raceways for wiring; or
 - (iii) work commonly done by unskilled labor or any installations under the exclusive control of electrical utilities.
- (c) For purposes of Subsection ~~[(11)]~~ (12)(b):
- (i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted by this Subsection [~~(11)~~] (12)(c).

[~~(12)~~] (13) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.

[~~(13)~~] (14) "Engage in a construction trade" means to:

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

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

[~~(14)~~] (15) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare. Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(16) "Gas appliance" means any device that uses natural gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

[~~(15)~~] (17) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical, and mechanical, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical and hire a licensed plumber or electrician as an employee. The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare,

and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

~~[(16)]~~ (18) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any or all of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works. However, a general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

~~[(17)]~~ (19) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with applicable standards.

~~[(18)]~~ (20) "Individual" means a natural person.

~~[(19)]~~ (21) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

~~[(20)]~~ (22) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

~~[(21)]~~ (23) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

~~[(22)]~~ (24) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

~~[(23)]~~ (25) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within three

feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the water supply, discharge of liquid and water carried waste, or the building drainage system within the walls of the building. It includes that work pertaining to the water supply, distribution pipes, fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.

~~[(24)]~~ (26) "Ratio of apprentices" means, for the purpose of determining compliance with the requirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work. All on-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

~~[(25)]~~ (27) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical, and mechanical, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

~~[(26)]~~ (28) "Residential apprentice plumber" means a person licensed under this chapter as a residential apprentice plumber who is learning the residential plumbing trade while working on residential buildings under the approved supervision of a residential journeyman plumber or a journeyman plumber.

~~[(27)]~~ (29) "Residential building," as it relates to the license classification of residential

apprentice plumber and residential journeyman plumber, means a single or multiple family dwelling of up to four units.

~~[(28)]~~ (30) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

~~[(29)]~~ (31) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

~~[(30)]~~ (32) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

~~[(31)]~~ (33) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

~~[(32)]~~ (34) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

~~[(33)]~~ (35) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

~~[(34)]~~ (36) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502 and as may be further defined by rule.

~~[(35)]~~ (37) "Wages" means all amounts due an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the

amount.

Section 2. Section **58-55-305** is amended to read:

58-55-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of his trust, office, or employment;

(2) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, hauling to and from construction sites, and lumbering;

(3) public utilities operating under the rules of the Public Service Commission on construction work incidental to their own business;

(4) sole owners of property engaged in building:

(a) no more than one residential structure per year and no more than three residential structures per five years on their property for their own noncommercial, nonpublic use; except, any person other than the property owner or individuals described in Subsection (5) who engages in building the structure must be licensed under this chapter if he is otherwise required to be licensed under this chapter; or

(b) structures on their property for their own noncommercial, nonpublic use which are incidental to a residential structure on the property, including sheds, carports, or detached garages;

(5) (a) an individual engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:

(i) works without compensation other than token compensation that is not considered salary or wages; and

(ii) works under the direction of the property owner who engages in building the structure;
(b) for purposes of this Subsection (5), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (4) to an individual exempted from licensure under this Subsection (5), that is:

(i) minimal in value when compared with the fair market value of the services provided by the individual;

(ii) not related to the fair market value of the services provided by the individual; and

(iii) is incidental to providing of services by the individual including paying for or providing meals or refreshment while services are being provided, or paying reasonable transportation costs incurred by the individual in travel to the site of construction;

(6) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(7) a contractor submitting a bid on a federal aid highway project, if, before undertaking any construction under that bid, the contractor is licensed under this chapter;

(8) (a) a person engaged in the alteration, repair, remodeling, or addition to or improvement of any building with a contracted or agreed value of less than \$1,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work;

(b) notwithstanding Subsection (8)(a)[;];

(i) work in the plumbing and electrical trades must be performed by a licensed electrician or plumber except as otherwise provided in this section; and

(ii) installation, repair, or replacement of a residential or commercial gas appliance or a combustion system must be performed by a person who has received certification under Subsection 58-55-308(2);

(9) a person practicing a specialty contractor classification or construction trade which is not classified by rule by the director as significantly impacting the public's health, safety, and welfare;

(10) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from

this chapter when doing work upon the property;

(11) (a) a person engaged in minor plumbing work incidental to the replacement or repair of a fixture or an appliance in a residential or small commercial building, or structure used for agricultural use, as defined in Section 58-56-4, provided that no modification is made to:

- (i) existing culinary water, soil, waste, or vent piping; or
- (ii) a gas appliance or combustion system;

(b) except as provided in Subsection (5), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (11)(a);

(12) a person who ordinarily would be subject to the plumber licensure requirements set forth in this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:

- (a) meets the appropriate state construction codes or local plumbing standards; and
- (b) is installed or repaired under the direction of a person authorized to do such work under an appropriate specialty contractor license;

(13) a person who ordinarily would be subject to the electrician licensure requirements set forth in this chapter when employed by or under contract with:

(a) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

(b) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;

(14) a person involved in minor electrical work incidental to a mechanical or service installation; and

(15) a student participating in construction trade education and training programs approved by the division in collaboration with the board under the condition that:

(a) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and

(b) a licensed contractor obtains the necessary building permits.

Section 3. Section **58-55-308** is amended to read:

58-55-308. Scope of practice -- Installation, repair, or replacement of gas appliance or combustion system -- Rules.

(1) The division, in collaboration with the board, may adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to define and limit the scope of practice and operating standards of the classifications and subclassifications licensed under this chapter in a manner consistent with established practice in the relevant industry. The division and the board may limit the field and scope of operations of a licensee under this chapter in accordance with the rules and the public health, safety, and welfare, based on the licensee's education, training, experience, knowledge, and financial responsibility.

(2) (a) The work and scope of practice covered by this Subsection (2) is the installation, repair, or replacement of a residential or commercial gas appliance or combustion system.

(b) The provisions of this Subsection (2) apply to any:

(i) licensee under this chapter whose license authorizes the licensee to perform the work described in Subsection (2)(a); and

(ii) person exempt from licensure under Subsection 58-55-305(8).

(c) Any person described in Subsection (2)(b) that performs work described in Subsection (2)(a):

(i) must first receive training and certification as specified in rules adopted by the division;
and

(ii) shall ensure that any employee authorized under other provisions of this chapter to perform work described in Subsection (2)(a) has first received training and certification as specified in rules adopted by the division.

(d) The division may exempt from the training requirements adopted under Subsection (2)(c) a person that has adequate experience, as determined by the division.

(e) The division shall exempt from initial certification requirements adopted under Subsection (2)(c) a person who has passed a test equivalent to the level of testing required by the division for certification, or has completed an apprenticeship program that teaches the installation

of gas line appliances and is approved by the Federal Bureau of Apprenticeship Training.

~~[(2)]~~ (3) This section does not prohibit a licensed specialty contractor from accepting and entering into a contract involving the use of two or more crafts or trades if the performance of the work in the crafts or trades, other than that in which he is licensed, is incidental and supplemental to the work for which he is licensed.

Section 4. Section **58-55-503** is amended to read:

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

(1) Any person who violates Subsection 58-55-308(2) or Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (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 Subsection 58-55-308(2) or 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 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 person has violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), 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 person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the 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 58-55-308(2) or Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19), 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 58-55-308(2) or Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19).

(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) 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.

(d) 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.

(e) 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.

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

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

(h) 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.

(i) (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 58-55-308(2) or Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19); 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) (i)(i)(B)(I);

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

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

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

(5) Any penalty imposed by the director under Subsection (4) (h) 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.