

1                                   **UTAH UNIFORM BUILDING STANDARDS ACT**

2   **AMENDMENTS**

3   2007 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Larry B. Wiley**

6   Senate Sponsor: Scott D. McCoy

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies provisions of the Utah Uniform Building Standards Act related to  
11 unlawful and unprofessional conduct by building inspectors and factory built housing  
12 dealers and provides penalties for that conduct, to include the issuing of citations to  
13 violators by the Division of Occupational and Professional Licensing.

14                   **Highlighted Provisions:**

15                   This bill:

- 16                   ▶ defines unlawful and unprofessional conduct for purposes of the Utah Uniform  
17 Building Standards Act, specifically as related to building inspectors and factory  
18 built housing set-up contractors;
- 19                   ▶ provides the Division of Occupational and Professional Licensing with authority to  
20 issue citations to persons who violate the unlawful conduct provisions of the Utah  
21 Uniform Building Standards Act;
- 22                   ▶ provides grounds for the immediate suspension of a licensee's license by the  
23 division to include the issuance of a citation for violations of unlawful conduct;
- 24                   ▶ provides that the division may issue cease and desist orders and assess fines for  
25 violating the unlawful conduct provisions of the Utah Uniform Building Standards  
26 Act; and
- 27                   ▶ provides a procedure for the collection of unpaid fines.

28                   **Monies Appropriated in this Bill:**

29                   None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **58-56-3**, as last amended by Chapter 75, Laws of Utah 2004

35 ENACTS:

36 **58-56-9.1**, Utah Code Annotated 1953

37 **58-56-9.3**, Utah Code Annotated 1953

38 **58-56-9.5**, Utah Code Annotated 1953



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

41 Section 1. Section **58-56-3** is amended to read:

42 **58-56-3. Definitions.**

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

44 (1) "Building" means a structure used or intended for supporting or sheltering any use  
45 or occupancy and any improvements attached to it.

46 (2) "Code(s)" means the following codes, including the standards and specifications  
47 contained in them:

48 (a) codes adopted by the commission under Subsection 58-56-4(2); and

49 (b) codes approved by the commission under Subsection 58-56-4(4)(a).

50 (3) "Commission" means the Uniform Building Code Commission created under this  
51 chapter.

52 (4) "Compliance agency" means:

53 (a) an agency of the state or any of its political subdivisions which issues permits for  
54 construction regulated under the codes~~[-or]~~;

55 (b) any other agency of the state or its political subdivisions specifically empowered to  
56 enforce compliance with the codes~~[-];~~ or

57 (c) any other state agency which chooses to enforce codes adopted under this chapter

58 by authority given the agency under a title other than Title 58, Occupations and Professions.

59 (5) "Factory built housing" means manufactured homes or mobile homes.

60 (6) (a) "Factory built housing set-up contractor" means an individual licensed by the  
61 division to set up or install factory built housing on a temporary or permanent basis.

62 (b) The scope of the work included under the license includes the placement [~~and~~] or  
63 securing, or both placement and securing, of the factory built housing on a permanent or  
64 temporary foundation, securing the units together if required, and connection of the utilities to  
65 the factory built housing unit, but does not include site preparation, construction of a  
66 permanent foundation, and construction of utility services to the near proximity of the factory  
67 built housing unit.

68 (c) If a dealer is not licensed as a factory built housing set-up contractor, that individual  
69 must subcontract the connection services to individuals who are licensed by the division to  
70 perform those specific functions under Title 58, Chapter 55, Utah Construction Trades  
71 Licensing Act.

72 (7) "HUD code" means the National Manufactured Housing Construction and Safety  
73 Standards Act, 42 U.S.C. Sec. 5401 et seq.

74 (8) "Local regulator" means each political subdivision of the state which is empowered  
75 to engage in the regulation of construction, alteration, remodeling, building, repair, and other  
76 activities subject to the codes.

77 (9) (a) "Manufactured home" means a transportable factory built housing unit  
78 constructed on or after June 15, 1976, according to the HUD Code, in one or more sections,  
79 which[;]:

80 (i) in the traveling mode, is eight body feet or more in width or 40 body feet or more in  
81 length, or when erected on site, is 400 or more square feet[;]; and [~~which~~]

82 (ii) is built on a permanent chassis and designed to be used as a dwelling with or  
83 without a permanent foundation when connected to the required utilities, and includes the  
84 plumbing, heating, air-conditioning, and electrical systems.

85 (b) Manufactured homes constructed on or after June 15, 1976, shall be identifiable by

86 the manufacturer's data plate bearing the date the unit was manufactured and a HUD label  
87 attached to the exterior of the home certifying the home was manufactured to HUD standards.

88 (10) "Mobile home" means a transportable factory built housing unit built prior to June  
89 15, 1976, in accordance with a state mobile home code which existed prior to the HUD Code.

90 (11) "Modular unit" means a structure built from sections which are manufactured in  
91 accordance with the construction standards adopted pursuant to Section 58-56-4 and  
92 transported to a building site, the purpose of which is for human habitation, occupancy, or use.

93 (12) "Opinion" means a written, nonbinding, and advisory statement issued by the  
94 commission concerning an interpretation of the meaning of the codes or the application of the  
95 codes in a specific circumstance issued in response to a specific request by a party to the issue.

96 (13) "State regulator" means an agency of the state which is empowered to engage in  
97 the regulation of construction, alteration, remodeling, building, repair, and other activities  
98 subject to the codes adopted pursuant to this chapter.

99 [~~(14) "Unlawful conduct" is as defined in Subsection 58-1-501(1) and includes:]~~

100 [~~(a) engaging in the sale of factory built housing without being registered with the  
101 division as a dealer, unless the sale is exempt under Section 58-56-16; and]~~

102 [~~(b) selling factory built housing within the state as a dealer without collecting and  
103 remitting to the division the fee required by Section 58-56-17.]~~

104 [~~(15) "Unprofessional conduct" is as defined in Subsection 58-1-501(2) and includes:]~~

105 [~~(a) any nondelivery of goods or services by a registered dealer which constitutes a  
106 breach of contract by the dealer;]~~

107 [~~(b) the failure of a registered dealer to pay a subcontractor or supplier any amounts to  
108 which that subcontractor or supplier is legally entitled; and]~~

109 [~~(c) any other activity which is defined as unprofessional conduct by division rule in  
110 accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking  
111 Act.]~~

112 Section 2. Section **58-56-9.1** is enacted to read:

113 **58-56-9.1. Unlawful conduct.**

114 Unlawful conduct is as defined in Subsection 58-1-501(1) and includes:

115 (1) engaging in the sale of factory built housing without being registered with the  
116 division as a dealer, unless the sale is exempt under Section 58-56-16;

117 (2) selling factory built housing within the state as a dealer without collecting and  
118 remitting to the division the fee required by Section 58-56-17;

119 (3) acting as a building inspector or representing oneself to be acting as a building  
120 inspector, unless licensed or exempted from licensure under this chapter or using the title  
121 building inspector or any other description, words, letters, or abbreviation indicating that the  
122 person is a building inspector if the person has not been licensed under this chapter;

123 (4) acting as a building inspector beyond the scope of the license held under this  
124 chapter; and

125 (5) hiring or employing in any manner an unlicensed person as a building inspector,  
126 unless exempted from licensure under this chapter.

127 Section 3. Section **58-56-9.3** is enacted to read:

128 **58-56-9.3. Unprofessional conduct.**

129 Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

130 (1) knowingly failing to inspect or issue correction notices for code violations which  
131 when left uncorrected would constitute a hazard to the public health and safety and knowingly  
132 failing to require that correction notices are complied with as a building inspector;

133 (2) the use of alcohol or the illegal use of drugs while performing duties as a building  
134 inspector or at any time to the extent that the inspector is physically or mentally impaired and  
135 unable to effectively perform the duties of an inspector;

136 (3) gross negligence in the performance of official duties as a building inspector;

137 (4) the personal use of information or knowingly revealing information to unauthorized  
138 persons when that information has been obtained by a building inspector as a result of the  
139 inspector's employment, work, or position as an inspector;

140 (5) unlawful acts or practices which are clearly unethical under generally recognized  
141 standards of conduct of a building inspector;

142 (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance  
143 of duties and responsibilities as a building inspector;

144 (7) a building inspector knowingly failing to require that all plans, specifications,  
145 drawings, documents, and reports be stamped by architects, professional engineers, or both as  
146 established by law;

147 (8) a building inspector knowingly failing to report to the division an act or omission of  
148 a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when  
149 left uncorrected constitutes a hazard to public health and safety;

150 (9) a building inspector knowingly failing to report to the division unlicensed practice  
151 persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades  
152 Licensing Act;

153 (10) a building inspector's approval of work which materially varies from approved  
154 documents that have been stamped by an architect, professional engineer, or both unless  
155 authorized by the licensed architect, professional engineer, or both;

156 (11) a building inspector failing to produce verification of current licensure and current  
157 certifications for the codes adopted under rules of the division upon request of the division, a  
158 compliance agency, or a contractor or property owner whose work is being inspected;

159 (12) nondelivery of goods or services by a registered dealer which constitutes a breach  
160 of contract by the dealer;

161 (13) the failure of a registered dealer to pay a subcontractor or supplier any amounts to  
162 which that subcontractor or supplier is legally entitled; and

163 (14) any other activity which is defined as unprofessional conduct by division rule in  
164 accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

165 Section 4. Section **58-56-9.5** is enacted to read:

166 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

167 (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with  
168 a citation issued under this section after it is final is guilty of a class A misdemeanor.

169 (2) Grounds for immediate suspension of a licensee's license by the division under this

170 chapter include:

171 (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and

172 (b) failure by a licensee to make application to, report to, or notify the division with  
173 respect to a matter for which application, notification, or reporting is required under this  
174 chapter or rules made under this chapter by the division.

175 (3) (a) If upon inspection or investigation, the division concludes that a person has  
176 violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section,  
177 and that disciplinary action is appropriate, the director or the director's designee from within  
178 the division shall:

179 (i) promptly issue a citation to the person according to this chapter and any pertinent  
180 rules;

181 (ii) attempt to negotiate a stipulated settlement; or

182 (iii) notify the person to appear before an adjudicative proceeding conducted under  
183 Title 63, Chapter 46b, Administrative Procedures Act.

184 (b) (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an  
185 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative  
186 proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or  
187 instead of the fine, be ordered by the division to cease from violating the provision.

188 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess  
189 licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.

190 (c) (i) Each citation shall be in writing and describe with particularity the nature of the  
191 violation, including a reference to the provision of the chapter, rule, or order alleged to have  
192 been violated.

193 (ii) The citation shall clearly state that the recipient must notify the division in writing  
194 within 20 calendar days of service of the citation if the recipient wishes to contest the citation  
195 at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act.

196 (iii) The citation shall clearly explain the consequences of failure to timely contest the  
197 citation or to make payment of any fines assessed by the citation within the time specified in

198 the citation.

199 (d) Each citation issued under this section, or a copy of each citation, may be served  
200 upon any person upon whom a summons may be served:

201 (i) in accordance with the Utah Rules of Civil Procedure;

202 (ii) personally or upon the person's agent by a division investigator or by any person  
203 specially designated by the director; or

204 (iii) by mail.

205 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the  
206 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
207 final order of the division and is not subject to further agency review.

208 (ii) The period to contest a citation may be extended by the division for cause.

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

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

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

215 (i) The director or the director's designee may assess fines for violations of Section  
216 58-56-9.1 as follows:

217 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;

218 (ii) for a second offense, a fine of up to \$2,000; and

219 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued  
220 offense.

221 (j) For the purposes of issuing a final order under this section and assessing a fine  
222 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

223 (i) the division previously issued a final order determining that a person committed a  
224 first or second offense in violation of a provision of Section 58-56-9.1; or

225 (ii) (A) the division initiated an action for a first or second offense;

226 (B) no final order has been issued by the division in the action initiated under  
227 Subsection (3)(j)(ii)(A);

228 (C) the division determines during an investigation that occurred after the initiation of  
229 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent  
230 violation of a provision of Section 58-56-9.1; and

231 (D) after determining that the person committed a second or subsequent offense under  
232 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under  
233 Subsection (3)(j)(ii)(A).

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

236 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the  
237 Commerce Service Fund.

238 (b) The director may collect an unpaid fine by:

239 (i) referring the matter to a collection agency; or

240 (ii) bringing an action in the district court of the county in which the person resides or  
241 in the county where the director's office is located.

242 (c) (i) The state's attorney general or a county attorney shall provide legal assistance  
243 and advice to the director in an action brought under Subsection (4)(b).

244 (ii) Reasonable attorney's fees and costs shall be awarded in an action brought to  
245 enforce the provisions of this section.