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**CONTINUING EDUCATION FOR
CONTRACTORS AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ron Bigelow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals certain continuing education requirements and penalties for licensed contractors.

Highlighted Provisions:

This bill:

- ▶ repeals certain core education requirements for a licensed contractor; and
- ▶ repeals the cease and desist penalty for a licensed contractor who does not complete the core education or professional education requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-501, as last amended by Laws of Utah 2008, Chapter 377

58-55-503, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **58-55-501** is amended to read:



28 **58-55-501. Unlawful conduct.**

29 Unlawful conduct includes:

30 (1) engaging in a construction trade, acting as a contractor, an alarm business or
31 company, or an alarm company agent, or representing oneself to be engaged in a construction
32 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
33 person doing any of these is appropriately licensed or exempted from licensure under this
34 chapter;

35 (2) acting in a construction trade, as an alarm business or company, or as an alarm
36 company agent beyond the scope of the license held;

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

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

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

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

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

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

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

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

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

56 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
57 journeyman plumber, residential journeyman plumber, journeyman electrician, master
58 electrician, or residential electrician, failing to directly supervise an apprentice under one's

59 supervision or exceeding the number of apprentices one is allowed to have under his
60 supervision;

61 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
62 funds in payment for a specific project from an owner or any other person, which funds are to
63 pay for work performed or materials and services furnished for that specific project, and after
64 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
65 amounts due and payable to persons who performed work or furnished materials or services
66 within a reasonable period of time;

67 (14) employing an unlicensed alarm business or company or an unlicensed individual
68 as an alarm company agent, except as permitted under the exemption from licensure provisions
69 under Section 58-1-307;

70 (15) if licensed as an alarm company or alarm company agent, filing with the division
71 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
72 false or fraudulent and intended to mislead the division in its consideration of the applicant for
73 licensure;

74 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

75 (a) the building or construction laws of this state or any political subdivision;

76 (b) the safety and labor laws applicable to a project;

77 (c) any provision of the health laws applicable to a project;

78 (d) the workers' compensation insurance laws of the state applicable to a project;

79 (e) the laws governing withholdings for employee state and federal income taxes,
80 unemployment taxes, FICA, or other required withholdings; or

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

82 (17) aiding or abetting any person in evading the provisions of this chapter or rules
83 established under the authority of the division to govern this chapter;

84 (18) engaging in the construction trade or as a contractor for the construction of
85 residences of up to two units when not currently registered or exempt from registration as a
86 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
87 Fund Act;

88 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
89 written contract the notification required in Section 38-11-108; or

90 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25[~~;~~or].
91 [~~(21) if licensed as a contractor, not completing a three-hour core education class and~~
92 ~~an additional three hours of professional education approved by the division and the~~
93 ~~Construction Services Commission within each two-year renewal cycle, beginning with the~~
94 ~~two-year renewal cycle that starts July 1, 2005, and ends June 30, 2007 unless an exemption~~
95 ~~has been granted to the licensee by the Construction Services Commission, with the~~
96 ~~concurrence of the division, except that this Subsection (21) is repealed effective July 1, 2010~~
97 ~~and its implementation is subject to the division receiving adequate funding for its~~
98 ~~implementation through a legislative appropriation.]~~

99 Section 2. Section ~~58-55-503~~ is amended to read:

100 **58-55-503. Penalty for unlawful conduct -- Citations.**

101 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
102 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), or (15), or Subsection 58-55-504(2), or who fails
103 to comply with a citation issued under this section after it is final, is guilty of a class A
104 misdemeanor.

105 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
106 individual and does not include a sole proprietorship, joint venture, corporation, limited
107 liability company, association, or organization of any type.

108 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
109 awarded and may not accept a contract for the performance of the work.

110 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
111 infraction unless the violator did so with the intent to deprive the person to whom money is to
112 be paid of the money received, in which case the violator is guilty of theft, as classified in
113 Section 76-6-412.

114 (3) Grounds for immediate suspension of the licensee's license by the division and the
115 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
116 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
117 report to, or notify the division with respect to any matter for which application, notification, or
118 reporting is required under this chapter or rules adopted under this chapter, including applying
119 to the division for a new license to engage in a new specialty classification or to do business
120 under a new form of organization or business structure, filing with the division current

121 financial statements, notifying the division concerning loss of insurance coverage, or change in
122 qualifier.

123 (4) (a) If upon inspection or investigation, the division concludes that a person has
124 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
125 (10), (12), (14), (19), [~~(21)~~], or Subsection 58-55-504(2), or any rule or order issued with
126 respect to these subsections, and that disciplinary action is appropriate, the director or the
127 director's designee from within the division shall promptly issue a citation to the person
128 according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or
129 notify the person to appear before an adjudicative proceeding conducted under Title 63G,
130 Chapter 4, Administrative Procedures Act.

131 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
132 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19), [~~or (21)~~], or Subsection
133 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding
134 of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection
135 (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating
136 Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19), [~~or~~
137 ~~(21)~~], or Subsection 58-55-504(2).

138 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
139 58-55-401 may not be assessed through a citation.

140 [~~(iii) (A) A person who receives a citation or is fined for violating Subsection~~
141 ~~58-55-501(21) may also be issued a cease and desist order from engaging in work to be~~
142 ~~performed by a contractor licensed under this chapter unless the person meets the continuing~~
143 ~~education requirement within 30 days after receipt of the citation or fine.]~~

144 [~~(B) The order, if issued, shall be removed upon the person's completion of the~~
145 ~~continuing education requirement.]~~

146 [~~(C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.]~~

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

150 (ii) The citation shall clearly state that the recipient must notify the division in writing
151 within 20 calendar days of service of the citation if the recipient wishes to contest the citation

152 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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

156 (c) Each citation issued under this section, or a copy of each citation, may be served
157 upon a person upon whom a summons may be served:

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

159 (ii) personally or upon the person's agent by a division investigator or by a person
160 specially designated by the director; or

161 (iii) by mail.

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

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

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

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

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

172 (h) Fines shall be assessed by the director or the director's designee according to the
173 following:

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

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

176 and

177 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
178 \$2,000 for each day of continued offense.

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

181 (A) the division previously issued a final order determining that a person committed a
182 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),

183 (3), (9), (10), (12), (14), or (19), or Subsection 58-55-504(2); or
184 (B) (I) the division initiated an action for a first or second offense;
185 (II) no final order has been issued by the division in the action initiated under
186 Subsection (4)(i)(i)(B)(I);
187 (III) the division determines during an investigation that occurred after the initiation of
188 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
189 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
190 (10), (12), (14), or (19), or Subsection 58-55-504(2); and
191 (IV) after determining that the person committed a second or subsequent offense under
192 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
193 Subsection (4)(i)(i)(B)(I).
194 (ii) In issuing a final order for a second or subsequent offense under Subsection
195 (4)(i)(i), the division shall comply with the requirements of this section.
196 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
197 into the Commerce Service Fund.
198 (b) A penalty which is not paid may be collected by the director by either referring the
199 matter to a collection agency or bringing an action in the district court of the county in which
200 the person against whom the penalty is imposed resides or in the county where the office of the
201 director is located.
202 (c) A county attorney or the attorney general of the state is to provide legal assistance
203 and advice to the director in any action to collect the penalty.
204 (d) In an action brought to enforce the provisions of this section, reasonable attorney's
205 fees and costs shall be awarded.

Legislative Review Note
as of 12-23-08 2:26 PM

Office of Legislative Research and General Counsel

H.B. 249 - Continuing Education for Contractors Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Individuals may benefit from reduced educational requirements.
