

Representative Christopher N. Herrod proposes the following substitute bill:

UTAH CONSTRUCTION TRADES LICENSING ACT -

ALARM COMPANIES AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies a provision of the Utah Construction Trades Licensing Act related to alarm company employees.

Highlighted Provisions:

This bill:

- ▶ authorizes the issuance of a temporary license to certain alarm company employees;
- ▶ provides that certain behavior is unlawful conduct on the part of an alarm company and agent; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-312, as renumbered and amended by Laws of Utah 2000, Chapter 317

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



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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 58-55-312 is amended to read:

58-55-312. Interim and temporary permits.

(1) Upon receipt of a complete application for licensure in accordance with Section 58-55-302, an applicant for licensure as an alarm company agent may be issued:

- (a) an interim permit[-]; or
- (b) subject to Subsection (3), a temporary permit.

(2) (a) Each interim permit shall expire 90 days after it is issued or on the date on which the applicant is issued a license, whichever is earlier.

(b) The division may reissue an interim permit if the delay in approving a license is beyond the control or influence of the interim permit holder.

(3) (a) The division may issue a temporary permit to an applicant for a license as an alarm company agent if:

(i) the division has received a background check on the applicant from the Bureau of Criminal Identification;

(ii) (A) the applicant is or will be employed at a call center, office, or administrative facility of an alarm company; and

(B) the applicant's only contact with a customer or potential customer of the alarm company is:

(I) from the call center, office, or administrative facility; and

(II) by telephone or other remote communication method; and

(iii) the alarm company by which the applicant is or will be employed affirms in writing to the division that the applicant, if issued a temporary license, will act only within the scope of the temporary license, as provided in Subsection (3)(a)(ii).

(b) A temporary license under this section expires 90 days after it is issued or the date on which the division issues a regular license to the applicant or denies the applicant's application, whichever is earlier.

~~[(3)]~~ (4) An interim permit holder may engage in the scope of an alarm company agent.

57 Section 2. Section **58-55-501** is amended to read:

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

59 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

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

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

86 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
87 journeyman plumber, residential journeyman plumber, journeyman electrician, master

88 electrician, or residential electrician, failing to directly supervise an apprentice under one's
89 supervision or exceeding the number of apprentices one is allowed to have under his
90 supervision;

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

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

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

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

- 105 (a) the building or construction laws of this state or any political subdivision;
- 106 (b) the safety and labor laws applicable to a project;
- 107 (c) any provision of the health laws applicable to a project;
- 108 (d) the workers' compensation insurance laws of the state applicable to a project;
- 109 (e) the laws governing withholdings for employee state and federal income taxes,
110 unemployment taxes, FICA, or other required withholdings; or
- 111 (f) reporting, notification, and filing laws of this state or the federal government;

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

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

118 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a

119 written contract the notification required in Section 38-11-108;

120 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25; [or]

121 (21) if licensed as a contractor, not completing a three-hour core education class and an
122 additional three hours of professional education approved by the division and the Construction
123 Services Commission within each two-year renewal cycle, beginning with the two-year renewal
124 cycle that starts July 1, 2005, and ends June 30, 2007 unless an exemption has been granted to
125 the licensee by the Construction Services Commission, with the concurrence of the division,
126 except that this Subsection (21) is repealed effective July 1, 2010 and its implementation is
127 subject to the division receiving adequate funding for its implementation through a legislative
128 appropriation[-];

129 (22) an alarm company allowing an employee with a temporary license under Section
130 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
131 license, as provided in Subsection 58-55-312(3)(a)(ii); and

132 (23) an alarm company agent under a temporary license under Section 58-55-312
133 engaging in conduct outside the scope of the temporary license, as provided in Subsection
134 58-55-312(3)(a)(ii).

135 Section 3. Section **58-55-503** is amended to read:

136 **58-55-503. Penalty for unlawful conduct -- Citations.**

137 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
138 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), [or] (15), (22), or (23) or Subsection
139 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
140 guilty of a class A misdemeanor.

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

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

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

150 (3) Grounds for immediate suspension of the licensee's license by the division and the
151 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
152 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
153 report to, or notify the division with respect to any matter for which application, notification, or
154 reporting is required under this chapter or rules adopted under this chapter, including applying
155 to the division for a new license to engage in a new specialty classification or to do business
156 under a new form of organization or business structure, filing with the division current
157 financial statements, notifying the division concerning loss of insurance coverage, or change in
158 qualifier.

159 (4) (a) If upon inspection or investigation, the division concludes that a person has
160 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
161 (10), (12), (14), (19), (21), (22), or (23), or Subsection 58-55-504(2), or any rule or order issued
162 with respect to these subsections, and that disciplinary action is appropriate, the director or the
163 director's designee from within the division shall promptly issue a citation to the person
164 according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or
165 notify the person to appear before an adjudicative proceeding conducted under Title 63G,
166 Chapter 4, Administrative Procedures Act.

167 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
168 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), [~~or~~] (21), (22), or (23) or
169 Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or
170 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
171 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from
172 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),
173 or (21), or Subsection 58-55-504(2).

174 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
175 58-55-401 may not be assessed through a citation.

176 (iii) (A) A person who receives a citation or is fined for violating Subsection
177 58-55-501(21) may also be issued a cease and desist order from engaging in work to be
178 performed by a contractor licensed under this chapter unless the person meets the continuing
179 education requirement within 30 days after receipt of the citation or fine.

180 (B) The order, if issued, shall be removed upon the person's completion of the

181 continuing education requirement.

182 (C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.

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

186 (ii) The citation shall clearly state that the recipient must notify the division in writing
187 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
188 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

197 (iii) by mail.

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

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

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

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

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

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

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

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

212 and

213 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
214 \$2,000 for each day of continued offense.

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

217 (A) the division previously issued a final order determining that a person committed a
218 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
219 (3), (9), (10), (12), (14), or (19), or Subsection 58-55-504(2); or

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

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

223 (III) the division determines during an investigation that occurred after the initiation of
224 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
225 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
226 (10), (12), (14), or (19), or Subsection 58-55-504(2); and

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

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

232 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
233 into the Commerce Service Fund.

234 (b) A penalty which is not paid may be collected by the director by either referring the
235 matter to a collection agency or bringing an action in the district court of the county in which
236 the person against whom the penalty is imposed resides or in the county where the office of the
237 director is located.

238 (c) A county attorney or the attorney general of the state is to provide legal assistance
239 and advice to the director in any action to collect the penalty.

240 (d) In an action brought to enforce the provisions of this section, reasonable attorney's
241 fees and costs shall be awarded.

Fiscal Note**H.B. 320 2nd Sub. (Gray) - Utah Construction Trades Licensing Act - Alarm Companies Amendments**

2010 General Session

State of Utah

State Impact

Enacting this bill will generate about \$500 annually to the Commerce Service Fund in additional citation revenue. The Commerce Department will require an appropriation of \$6,500 to administer the provisions. Commerce Service Fund revenues and expenditures affect the annual transfer to the General Fund.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$6,000)	(\$6,000)
Commerce Service Fund	\$0	\$6,500	\$6,500	\$0	\$0	\$0
Total	\$0	\$6,500	\$6,500	\$0	(\$6,000)	(\$6,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
