

1 **REGULATION OF SIGN COMPANIES**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Patricia W. Jones**

5 House Sponsor: James A. Dunnigan

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Utah Construction Trades Licensing Act relating to
10 specified sign contractors.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ makes it unlawful for a sign installation contractor or nonelectrical outdoor
14 advertising sign contractor to fail to display the contractor's license number on
15 vehicles that display the contractor's business name and to fail to carry a copy of the
16 contractor's license in any other vehicle the contractor uses;

17 ▶ requires the Division of Occupational and Professional Licensing to maintain a
18 record of violations of sign company licensing requirements; and

19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **58-55-402**, as last amended by Laws of Utah 2000, Chapters 233 and 317

27 **58-55-501**, as last amended by Laws of Utah 2010, Chapters 53 and 387

28 **58-55-503**, as last amended by Laws of Utah 2010, Chapters 278 and 387

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

31 Section 1. Section **58-55-402** is amended to read:

32 **58-55-402. Investigation of regulated activity.**

33 (1) The division shall be responsible for the investigation of persons and activities in
34 violation of the provisions of this chapter.

35 (2) (a) Investigation by the division shall include investigations of:

36 [~~(a)~~] (i) licensees engaged in unlawful or unprofessional conduct; and

37 [~~(b)~~] (ii) unlicensed persons engaged in the conduct of activity or work regulated under
38 this chapter and for which a license is required.

39 (b) (i) As used in this Subsection (2)(b), "sign contractor":

40 (A) means a sign installation contractor or nonelectrical outdoor advertising sign
41 contractor, as classified and defined in division rules; and

42 (B) does not include a sign installation contractor or nonelectrical outdoor advertising
43 sign contractor, as classified and defined in division rules, that is subject to Title 72, Chapter 7,
44 Part 5, Utah Outdoor Advertising Act.

45 (ii) The division shall maintain a record of the number of unlicensed persons found to
46 have engaged each year in the conduct of activity or work regulated under this chapter for
47 which a license as a sign contractor is required, including the location where a violation
48 occurred.

49 (3) The division shall decline to proceed with investigation of the violation of any
50 provisions of this chapter if the division finds there is no apparent material jeopardy to the
51 public health, safety, and welfare.

52 (4) The division shall have no responsibility for the inspection of construction work
53 performed in the state to determine compliance with applicable codes, or industry and
54 workmanship standards, except as provided in Subsections 58-1-501(2)(g), 58-55-502(2), (3),
55 and (4), and 58-55-501(16).

56 (5) Authorized representatives of the division shall be permitted to enter upon the
57 premises or site of work regulated under this chapter for the purpose of determining

58 compliance with the provisions of this chapter.

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

60 **58-55-501. Unlawful conduct.**

61 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

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

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

88 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
89 journeyman plumber, residential journeyman plumber, journeyman electrician, master
90 electrician, or residential electrician, failing to directly supervise an apprentice under one's
91 supervision or exceeding the number of apprentices one is allowed to have under his
92 supervision;

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25;

123 (21) if licensed as a contractor, not completing the approved continuing education
124 required under Section 58-55-302.5;

125 (22) an alarm company allowing an employee with a temporary license under Section
126 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
127 license, as provided in Subsection 58-55-312(3)(a)(ii); ~~and~~

128 (23) an alarm company agent under a temporary license under Section 58-55-312
129 engaging in conduct outside the scope of the temporary license, as provided in Subsection
130 58-55-312(3)(a)(ii)~~]; and~~

131 (24) the failure of a sign installation contractor or nonelectrical outdoor advertising
132 sign contractor, as classified and defined in division rules, to:

133 (a) display the contractor's license number prominently on a vehicle that:

134 (i) the contractor uses; and

135 (ii) displays the contractor's business name; or

136 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
137 at a job site, whether or not the vehicle is owned by the contractor.

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

139 **58-55-503. Penalty for unlawful conduct -- Citations.**

140 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
141 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), ~~or~~ (23), or (24), or Subsection

142 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
143 guilty of a class A misdemeanor.

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

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

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

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

162 (4) (a) If upon inspection or investigation, the division concludes that a person has
163 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
164 (10), (12), (14), (19), (21), (22), [~~or~~] (23), or (24), or Subsection 58-55-504(2), or any rule or
165 order issued with respect to these subsections, and that disciplinary action is appropriate, the
166 director or the director's designee from within the division shall promptly issue a citation to the
167 person according to this chapter and any pertinent rules, attempt to negotiate a stipulated
168 settlement, or notify the person to appear before an adjudicative proceeding conducted under
169 Title 63G, Chapter 4, Administrative Procedures Act.

170 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
171 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), [~~or~~] (23), or (24), or
172 Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or
173 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
174 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from
175 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),
176 [~~or~~] (21), or (24), or Subsection 58-55-504(2).

177 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
178 58-55-401 may not be assessed through a citation.

179 (iii) (A) A person who receives a citation or is fined for violating Subsection
180 58-55-501(21) may also be issued a cease and desist order from engaging in work to be
181 performed by a contractor licensed under this chapter unless the person meets the continuing
182 education requirement within 30 days after receipt of the citation or fine.

183 (B) The order, if issued, shall be removed upon the person's completion of the
184 continuing education requirement.

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

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

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

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

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

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

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

200 (iii) by mail.

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

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

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

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

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

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

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

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

215 and

216 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
217 \$2,000 for each day of continued offense.

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

220 (A) the division previously issued a final order determining that a person committed a
221 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
222 (3), (9), (10), (12), (14), [or] (19), or (24), or Subsection 58-55-504(2); or

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

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

226 (III) the division determines during an investigation that occurred after the initiation of
227 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
228 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
229 (10), (12), (14), [~~or~~] (19), or (24), or Subsection 58-55-504(2); and

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

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

235 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
236 into the Commerce Service Account created by Section 13-1-2.

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

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

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