

1 **CONSTRUCTION TRADES LICENSING PENALTY PERIODS**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Paul Ray**

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends a provision related to unlawful conduct for a person licensed in a
11 construction trade.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that the state may not bring an action against a person licensed in a
15 construction trade for certain unlawful conduct after a certain amount of time after
16 the person committed the unlawful conduct; and

17 ▶ provides that the Division of Occupational and Professional Licensing may not
18 bring an enforcement action against a person licensed in a construction trade on the
19 basis that the division previously issued the person a citation, after a certain amount
20 of time after the Division issued the citation.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **58-55-503**, as last amended by Laws of Utah 2014, Chapter 188



28

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

30 Section 1. Section **58-55-503** is amended to read:

31 **58-55-503. Penalty for unlawful conduct -- Citations.**

32 (1) (a) (i) A person who violates Subsection **58-55-308**(2), Subsection **58-55-501**(1),
33 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or
34 (29), or Subsection **58-55-504**(2), or who fails to comply with a citation issued under this
35 section after it is final, is guilty of a class A misdemeanor.

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

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

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

45 (3) Grounds for immediate suspension of a licensee's license by the division and the
46 commission include:

47 (a) the issuance of a citation for violation of Subsection **58-55-308**(2), Section
48 **58-55-501**, or Subsection **58-55-504**(2); and

49 (b) the failure by a licensee to make application to, report to, or notify the division with
50 respect to any matter for which application, notification, or reporting is required under this
51 chapter or rules adopted under this chapter, including:

52 (i) applying to the division for a new license to engage in a new specialty classification
53 or to do business under a new form of organization or business structure;

54 (ii) filing a current financial statement with the division; and

55 (iii) notifying the division concerning loss of insurance coverage or change in qualifier.

56 (4) (a) If upon inspection or investigation, the division concludes that a person has
57 violated the provisions of Subsection **58-55-308**(2), Subsection **58-55-501**(1), (2), (3), (9),
58 (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection

59 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
60 action is appropriate, the director or the director's designee from within the division shall
61 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
62 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
63 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

64 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
65 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
66 (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a
67 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be
68 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered
69 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),
70 (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

71 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
72 58-55-401 may not be assessed through a citation.

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

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

79 (iii) A citation shall clearly explain the consequences of failure to timely contest the
80 citation or to make payment of any fines assessed by the citation within the time specified in
81 the citation.

82 (c) A citation issued under this section, or a copy of a citation, may be served upon a
83 person upon whom a summons may be served:

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

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

87 (iii) by mail.

88 (d) (i) If within 20 calendar days after the day on which a citation is served, the person
89 to whom the citation was issued fails to request a hearing to contest the citation, the citation

90 becomes the final order of the division and is not subject to further agency review.

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

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

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

96 (g) A citation may not be issued under this section after the expiration of six months
97 following the occurrence of a violation.

98 (h) The director or the director's designee shall assess a fine in accordance with the
99 following:

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

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

102 and

103 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
104 \$2,000 for each day of continued offense.

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

107 (A) the division previously issued a final order determining that a person committed a
108 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
109 (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2);

110 or

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

112 (II) a final order has not been issued by the division in the action initiated under
113 Subsection (4)(i)(i)(B)(I);

114 (III) the division determines during an investigation that occurred after the initiation of
115 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
116 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
117 (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and

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

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

123 (j) In addition to any other licensure sanction or fine imposed under this section, the
124 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
125 two or more times within a 12-month period, unless, with respect to a violation of Subsection
126 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
127 legal working status of the individual who was the subject of the violation using a status
128 verification system, as defined in Section 13-47-102.

129 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
130 for each individual is considered a separate violation.

131 (5) Notwithstanding Subsection (1), (2), (3), or (4), the division may not take an
132 enforcement action against a licensee under this section, on the basis that the division
133 previously issued the licensee a citation for unlawful conduct under Subsection 58-55-501(3),
134 five years or more after the day on which the division issued the citation.

135 [~~5~~] (6) (a) A penalty imposed by the director under Subsection (4)(h) shall be
136 deposited into the Commerce Service Account created by Section 13-1-2.

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

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

143 (d) In an action brought to enforce the provisions of this section, the court shall award
144 reasonable attorney fees and costs to the prevailing party.