

Part 5 Unlawful and Unprofessional Conduct - Penalties

58-55-501 Unlawful conduct.

Unlawful conduct includes:

- (1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;
- (2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;
- (3) hiring or employing a person who is not licensed under this chapter to perform work on a project, unless the person:
 - (a) is an employee of a person licensed under this chapter for wages; and
 - (b) is not required to be licensed under this chapter;
- (4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;
- (5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;
- (6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;
- (7) failing to obtain a building permit when required by law or rule;
- (8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
- (9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
- (10) allowing one's license to be used by another except as provided by statute or rule;
- (11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;
- (12) if licensed as a contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under the contractor's supervision;
- (13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;
- (14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;
- (15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;
- (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

- (a) the building or construction laws of this state or any political subdivision;
 - (b) the safety and labor laws applicable to a project;
 - (c) any provision of the health laws applicable to a project;
 - (d) the workers' compensation insurance laws of the state applicable to a project;
 - (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or
 - (f) reporting, notification, and filing laws of this state or the federal government;
- (17) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
- (18) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108;
- (19) wrongfully filing a preconstruction or construction lien in violation of Section 38-1a-308;
- (20) if licensed as a contractor, not completing the approved continuing education required under Section 58-55-302.5;
- (21) an alarm company allowing an employee with a temporary license under Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);
- (22) an alarm company agent under a temporary license under Section 58-55-312 engaging in conduct outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);
- (23)
- (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States; or
 - (b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah while not lawfully present in the United States;
- (24) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an individual who engages, or will engage, in a construction trade in Utah for a separate entity for which the unincorporated entity provides the individual as labor:
- (a) workers' compensation coverage:
 - (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; or
 - (ii) that would be required under the chapters listed in Subsection (24)(a)(i) if the unincorporated entity were licensed under this chapter; and
 - (b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (25) the failure of a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, to:
- (a) display the contractor's license number prominently on a vehicle that:
 - (i) the contractor uses; and
 - (ii) displays the contractor's business name; or
 - (b) carry a copy of the contractor's license in any other vehicle that the contractor uses at a job site, whether or not the vehicle is owned by the contractor;

(26)

- (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual; or
- (b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual, who owns an interest in the unincorporated entity, to engage in a construction trade in the state while the individual is using a Social Security number that does not belong to that individual;

(27) a contractor failing to comply with a requirement imposed by a political subdivision, state agency, or board of education under Section 58-55-310; or

(28) failing to timely comply with the requirements described in Section 58-55-605.

Amended by Chapter 339, 2020 General Session

58-55-502 Unprofessional conduct.

Unprofessional conduct includes:

- (1) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;
- (2) disregarding or violating through gross negligence or a pattern of negligence:
 - (a) the building or construction laws of this state or any political subdivision;
 - (b) the safety and labor laws applicable to a project;
 - (c) any provision of the health laws applicable to a project;
 - (d) the workers' compensation insurance laws of this state applicable to a project;
 - (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, Social Security payroll taxes, or other required withholdings; or
 - (f) any reporting, notification, and filing laws of this state or the federal government;
- (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;
- (4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:
 - (a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or the owner's duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;
 - (b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;
 - (c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;
 - (d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;
 - (e) failure to provide, when applicable, the information required by Section 38-11-108; and
 - (f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;
- (5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;

- (6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311;
- (7) failing to comply with operating standards established by rule in accordance with Section 58-55-308;
- (8) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States;
- (9) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity:
 - (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and
 - (b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, for an individual who owns, directly or indirectly, less than an 8% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
- (10) the failure of an alarm company or alarm company agent to inform a potential customer, before the customer's purchase of an alarm system or alarm service from the alarm company, of the policy of the county, city, or town within which the customer resides relating to priority levels for responding to an alarm signal transmitted by the alarm system that the alarm company provides the customer.

Amended by Chapter 170, 2011 General Session

Amended by Chapter 413, 2011 General Session

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

- (1)
 - (a)
 - (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (16)(e), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.
 - (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.
 - (b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.
- (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.
- (3) Grounds for immediate suspension of a licensee's license by the division and the commission include:
 - (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and
 - (b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

- (i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;
 - (ii) filing a current financial statement with the division; and
 - (iii) notifying the division concerning loss of insurance coverage or change in qualifier.
- (4)
- (a)
 - (i) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), or (28), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
 - (ii) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (16)(e), (18), (20), (21), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2).
 - (iii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.
 - (b)
 - (i) A citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.
 - (ii) A citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.
 - (iii) A citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.
 - (c) A citation issued under this section, or a copy of a citation, may be served upon a person upon whom a summons may be served:
 - (i) in accordance with the Utah Rules of Civil Procedure;
 - (ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or
 - (iii) by mail.
 - (d)
 - (i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
 - (ii) The period to contest a citation may be extended by the division for cause.
 - (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.

- (f) The failure of an applicant for licensure to comply with a citation after the citation becomes final is a ground for denial of license.
- (g) A citation may not be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.
- (h)
 - (i) Except as provided in Subsections (4)(h)(ii) and (5), the director or the director's designee shall assess a fine in accordance with the following:
 - (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
 - (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and
 - (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.
 - (ii) Except as provided in Subsection (5), if a person violates Subsection 58-55-501(16)(e) or (28), the director or the director's designee shall assess a fine in accordance with the following:
 - (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
 - (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000; and
 - (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000 for each day of continued offense.
- (i)
 - (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:
 - (A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2); or
 - (B)
 - (I) the division initiated an action for a first or second offense;
 - (II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);
 - (III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (19), (23), (24), (25), (26), (27), (28), or Subsection 58-55-504(2); and
 - (IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).
 - (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.
- (j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(23) or (24) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(23), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.
- (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(23) or (24) for each individual is considered a separate violation.

- (5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.
- (6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.
- (7)
 - (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.
 - (b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.
 - (c) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.
 - (d) In an action brought to collect a penalty, the court shall award reasonable attorney fees and costs to the prevailing party.

Amended by Chapter 4, 2020 Special Session 5

58-55-504 Crane operators -- Required certification -- Penalty for violation.

- (1) As used in this section:
 - (a) "Commercial construction projects" means construction, alteration, repair, demolition, or excavation projects that do not involve:
 - (i) single family detached housing;
 - (ii) multifamily attached housing up to and including a fourplex; or
 - (iii) commercial construction of not more than two stories above ground.
 - (b)
 - (i) "Crane operator" means an individual engaged in operating a crane, which for purposes of this section is a power-operated hoisting machine used in construction, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally by the rotation of the machine on a carrier.
 - (ii) It does not include operating a fork lift, digger derrick truck, aircraft, bucket truck, knuckle boom, side boom, mechanic's truck, or a vehicle or machine not using a power-operated winch and load-line.
- (2)
 - (a) In order to operate a crane on commercial construction projects, an individual shall be certified as a crane operator by the National Commission for the Certification of Crane Operators or any other organization determined by the division to offer an equivalent testing and certification program that meets the requirements of the American Society of Mechanical Engineers ASME B 30.5 and the accreditation requirements of the National Commission for Certifying Agencies.
 - (b) An individual who violates Subsection (2)(a) is guilty of a class A misdemeanor.
- (3) An individual engaged in construction or operation incidental to petroleum refining or electrical utility construction or maintenance is exempt from the crane operator certification requirement of Subsection (2)(a).

Amended by Chapter 98, 2007 General Session

