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

(1) As used in this section:

- (a) "Person" means, in reference to Subsection 58-55-504(2), an individual, and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.
- (b) "Qualifying violation" means a violation under:
 - (i) Subsection 58-55-308(2);
 - (ii) Subsections 58-55-501(1) through (3), (7), (9), (10), (12), (14), (16)(e), (18), or (20) through (28);
 - (iii) Subsection 58-55-502(4)(a) or (11); or
 - (iv) Subsection 58-55-504(2).

(2)

- (a) A person who violates Subsection 58-55-501(1) through (7), (9), (10), (12), (14), (15), (16)(e), or (21) through (28), Subsection 58-55-308(2), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after the citation is final, is guilty of a class A misdemeanor.
- (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.

(3) A person who violates Subsection 58-55-501(13) is guilty of:

- (a) an infraction; or
- (b) if the violator did so with the intent to deprive the person to whom money is to be paid of the money received, of theft under Section 76-6-404.

(4) 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.

(5)

- (a)
 - (i) If upon inspection or investigation, the division concludes that a person has committed a qualifying violation or violated any rule or order issued with respect to a qualifying violation, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:
 - (A) promptly issue a citation to the person according to this chapter and any pertinent rules;
 - (B) attempt to negotiate a stipulated settlement; or
 - (C) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
 - (ii) A person who committed a qualifying violation, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be

assessed a fine and may, in addition to or in lieu of, be ordered to cease and desist from engaging in the qualifying violation.

- (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) A citation shall:
 - (i) 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) clearly state that the recipient must notify the division in writing within 20 calendar days after the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
 - (iii) 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 after 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 (5)(h)(ii) and (6), the director or the director's designee shall assess a fine in accordance with the following:
 - (A) for a first offense handled under Subsection (5)(a), a fine of up to \$1,000;
 - (B) for a second offense handled under Subsection (5)(a), a fine of up to \$2,000; and
 - (C) for any subsequent offense handled under Subsection (5)(a), a fine of up to \$2,000 for each day of continued offense.
 - (ii) Except as provided in Subsection (6), 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 under Subsection (5)(a), a fine of up to \$2,000;
 - (B) for a second offense handled under Subsection (5)(a), a fine of up to \$4,000; and
 - (C) for any subsequent offense handled under Subsection (5)(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 (5)(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 qualifying violation; 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 (5)(i)(i)(B)(I);
 - (III) the division determines during an investigation that occurred after the initiation of the action under Subsection (5)(i)(i)(B)(I) that the person committed a second or subsequent qualifying violation; and
 - (IV) after determining that the person committed a second or subsequent qualifying violation under Subsection (5)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (5)(i)(i)(B)(I).
- (ii) In issuing a final order for a second or subsequent offense under Subsection (5)(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.
- (6) 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.
- (7) 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.
- (8)
 - (a) A penalty imposed by the director under Subsection (5) 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 226, 2024 General Session