

**58-56-9.5 Penalty for unlawful conduct -- Citations.**

- (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.
- (2) Grounds for immediate suspension of a licensee's license by the division under this chapter include:
  - (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and
  - (b) failure by a licensee to make application to, report to, or notify the division with respect to a matter for which application, notification, or reporting is required under this chapter or rules made under this chapter by the division.
- (3)
  - (a) If upon inspection or investigation, the division concludes that a person has violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:
    - (i) promptly issue a citation to the person according to this chapter and any pertinent rules;
    - (ii) attempt to negotiate a stipulated settlement; or
    - (iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
  - (b)
    - (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or instead of the fine, be ordered by the division to cease from violating the provision.
    - (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.
  - (c)
    - (i) Each 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) The 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) The 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.
  - (d) Each citation issued under this section, or a copy of each citation, may be served upon any 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 any person specially designated by the director; or
    - (iii) by mail.
  - (e)
    - (i) If within 20 calendar days from the service of a citation, 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.
  - (f) 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 it becomes final.

- (g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of a license.
  - (h) No citation may be issued under this section after the expiration of six months following the occurrence of the violation.
  - (i) The director or the director's designee may assess fines for violations of Section 58-56-9.1 as follows:
    - (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;
    - (ii) for a second offense, a fine of up to \$2,000; and
    - (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued offense.
  - (j) For the purposes of issuing a final order under this section and assessing a fine under Subsection (3)(i), an offense constitutes a second or subsequent offense if:
    - (i) the division previously issued a final order determining that a person committed a first or second offense in violation of a provision of Section 58-56-9.1; or
    - (ii)
      - (A) the division initiated an action for a first or second offense;
      - (B) no final order has been issued by the division in the action initiated under Subsection (3)(j)(ii)(A);
      - (C) the division determines during an investigation that occurred after the initiation of the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent violation of a provision of Section 58-56-9.1; and
      - (D) after determining that the person committed a second or subsequent offense under Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under Subsection (3)(j)(ii)(A).
  - (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j), the division shall comply with the requirements of this section.
- (4)
- (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the Commerce Service Account created by Section 13-1-2.
  - (b) The director may collect an unpaid fine by:
    - (i) referring the matter to a collection agency; or
    - (ii) bringing an action in the district court of the county in which the person resides or in the county where the director's office is located.
  - (c)
    - (i) The state's attorney general or a county attorney shall provide legal assistance and advice to the director in an action brought under Subsection (4)(b).
    - (ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce the provisions of this section.

Amended by Chapter 278, 2010 General Session