

CONTRACTOR LICENSING AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING;
REPEALING THE MONETARY LIMIT FOR CONTRACTORS; AMENDING THE
FINANCIAL RESPONSIBILITY REQUIREMENTS FOR CONTRACTORS; EXTENDING
THE CITATION AUTHORITY OF THE DIVISION FOR VIOLATIONS OF THE LICENSING
ACT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-55-102, as last amended by Chapter 240, Laws of Utah 1996

58-55-306, as renumbered and amended by Chapter 181, Laws of Utah 1994

58-55-402, as renumbered and amended by Chapter 181, Laws of Utah 1994

58-55-403, as renumbered and amended by Chapter 181, Laws of Utah 1994

58-55-501, as enacted by Chapter 181, Laws of Utah 1994

58-55-503, as last amended by Chapter 10, Laws of Utah 1997

REPEALS:

58-55-309, as renumbered and amended by Chapter 181, Laws of Utah 1994

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

Section 1. Section **58-55-102** is amended to read:

58-55-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under approved supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.

(2) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under approved supervision of a journeyman plumber.

(3) "Approved supervision" means the immediate supervision of apprentices by qualified

licensed electricians or plumbers as a part of a planned program of training.

(4) "Board" means the Contractors Licensing Board, Electrician Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

(5) "Construction trade" means any trade or occupation involving construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property.

(6) "Construction trades instructor" means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of an instructor who has no economic interest in the project.

(7) "Contractor" means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

(a) a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;

(b) any person who represents himself to be a contractor by advertising or any other means;

(c) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";

(d) any person engaged in any construction trade for which licensure is required under this chapter; or

(e) a construction manager who performs management and counseling services on a construction project for a fee.

(8) (a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

(b) "Electrical trade" does not include:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or
(iii) work commonly done by unskilled labor or any installations under the exclusive control of electrical utilities.

(c) For purposes of Subsection (8)(b):

(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted by this Subsection (8)(c).

(9) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.

(10) "Engage in a construction trade" means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(11) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare. Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(12) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical, and mechanical, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform

the mechanical and hire a licensed plumber or electrician as an employee. The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(13) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any or all of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works. However, a general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(14) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with applicable standards.

(15) "Individual" means a natural person.

(16) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(17) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(18) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

~~[(19) "Monetary limit" means the limit established by the division under Section 58-55-309.]~~

~~[(20) "Percentage of completion on a contract" is the percentage obtained by dividing costs to date by total estimated costs and multiplying by 100. Unless otherwise specified by rule, specific application of this definition shall be based upon the "cost-to-cost method" provided in the 1990 edition of the "Audit and Accounting Guide for Construction Contractors," Appendix D, published by the American Institute of Certified Public Accountants. The division may, upon request or upon its own action, establish an alternate generally recognized method of calculation to determine percentage of completion, if the method is appropriate to the licensee's or applicant's accounting procedures.]~~

~~[(21)]~~ (19) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

~~[(22)]~~ (20) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the water supply, discharge of liquid and water carried waste, or the building drainage system within the walls of the building. It includes that work pertaining to the water supply, distribution pipes, fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.

~~[(23)]~~ (21) "Ratio of apprentices" means, for the purpose of determining compliance with the requirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work. All on-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

~~[(24)]~~ (22) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily

residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical, and mechanical, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

~~[(25)]~~ (23) "Residential apprentice plumber" means a person licensed under this chapter as a residential apprentice plumber who is learning the residential plumbing trade while working on residential buildings under the approved supervision of a residential journeyman plumber or a journeyman plumber.

~~[(26)]~~ (24) "Residential building," as it relates to the license classification of residential apprentice plumber and residential journeyman plumber, means a single or multiple family dwelling of up to four units.

~~[(27)]~~ (25) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

~~[(28)]~~ (26) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

~~[(29)]~~ (27) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

~~[(30)]~~ (28) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage

does not exceed 250 volts line to line and 125 volts to ground.

~~[(31)]~~ (29) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

~~[(32)]~~ (30) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

~~[(33)]~~ (31) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502 and as may be further defined by rule.

~~[(34)]~~ (32) "Wages" means all amounts due an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

~~[(35)] "Work in process" means all unfinished work under verbal or written contract, whether in or out of Utah, regardless of whether licensure is required under this chapter, for which costs have accrued or been realized. The value of unfinished work on a contract shall be determined by expressing the current percentage of completion as a decimal fraction, subtracting it from 1.00 and multiplying the difference by the total dollar amount of the contract.]~~

Section 2. Section **58-55-306** is amended to read:

58-55-306. Financial responsibility.

(1) An applicant for licensure as a contractor, and a licensee applying for renewal or reinstatement of a contractor's license shall demonstrate to the division and the board the applicant's or licensee's financial responsibility before the issuance of or the renewal ~~[of a license. The burden to demonstrate financial responsibility is upon the applicant or licensee.]~~ or reinstatement of a license by:

~~[(2) Evidence of financial responsibility shall be demonstrated by providing the division with a license bond, cash deposit, financial statements prepared by an independent certified public accountant, or by division review of the applicant's or licensee's financial statements, at the option of~~

the licensee, and in accordance with provisions defined by rule.]

~~[(3) The financial responsibility of a corporation shall be established independently of and without reliance upon the assets or guarantees of its officers, directors, and stockholders, but upon a showing of reasonable need, the division and board may inquire into the financial responsibility of the corporation's officers and directors as a criterion in determining the corporation's financial responsibility.]~~

(a) (i) completing a questionnaire developed by the division; and

(ii) signing the questionnaire, certifying that the information provided is true and accurate;

or

(b) submitting a bond in an amount and form determined by the division.

(2) The division may audit an applicant's or licensee's demonstration of financial responsibility on a random basis or upon finding of a reasonable need.

(3) The burden to demonstrate financial responsibility is upon the applicant or licensee.

Section 3. Section **58-55-402** is amended to read:

58-55-402. Investigation of regulated activity.

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

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

(a) licensees engaged in unlawful or unprofessional conduct; and

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

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

(4) The division shall have no responsibility for the inspection of construction work performed in the state to determine compliance with applicable codes, or industry and workmanship standards, except as provided in Subsections 58-1-501(2)(g), 58-55-502(2), (3), and (4), and 58-55-501~~(16)~~ (14).

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

Section 4. Section **58-55-403** is amended to read:

58-55-403. Minimum time for division action.

[~~(1)~~] The division has at least five working days after receiving an application for licensure to determine whether to issue a license under this chapter.

[~~(2)~~ Except as provided in Subsection (3), the division has at least five working days after receiving a request for a change in the monetary limit to determine whether to grant the change.]

[~~(3)~~ The division shall approve or deny a request for an increase in the monetary limit within five working days after receiving the request if the licensee filed, within five working days before submitting the request to the division, a notice of intent to request an increase under Subsection 58-55-309(5).]

Section 5. Section **58-55-501** is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, 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 beyond the scope of the license held;

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

(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) exceeding one's monetary limit as a licensed contractor, as the limit is defined by statute or rule;]~~

~~[(13) if licensed as a contractor, submitting a bid on a single project in an amount exceeding his monetary limit, unless he first files with the division a notice of intent to request an increase of the monetary limit in compliance with Subsection 58-55-309(5);]~~

~~[(14)]~~ (12) if licensed as a specialty 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 his supervision;

~~[(15)]~~ (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;

~~[(16)]~~ (14) 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, FICA, or other required withholdings; or
 - (f) reporting, notification, and filing laws of this state or the federal government;
- [~~(17)~~] (15) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter; or
- [~~(18)~~] (16) 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.

Section 6. Section **58-55-503** is amended to read:

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

(1) Any person who violates Subsections 58-55-501(1) [~~through (14), (16), (17) or (18)~~], (2), (3), (9), (10), or (12), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) [~~or (13)~~] may not be awarded and may not accept a contract for the performance of the work. [~~Any licensee who submits a notice of intent to request an increase in the monetary limit under Subsection 58-55-309(5), but who is not granted an increase sufficient to cover the award of a contract upon which he has bid, may not be awarded and may not accept the contract.~~]

(2) Any person who violates the provisions of Subsection 58-55-501[~~(15)~~](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 the licensee's license by the division and the board include the issuance of a citation for violation of Section 58-55-501 or 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 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, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a contractor has violated the provisions of Subsections 58-55-501(1), (2), (3), ~~(9), (10), (12)~~, or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the contractor according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the contractor to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), ~~or~~ (3), ~~(9), (10), or (12)~~, 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 58-55-501(1), (2), ~~or~~ (3), ~~(9), (10), or (12)~~.

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

(b) 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. 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 63, Chapter 46b, Administrative Procedures Act. 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.

~~[(c) The division may issue a notice in lieu of a citation.]~~

~~[(d)]~~ (c) 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 in accordance with the Utah Rules of Civil

Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

~~[(e)]~~ (d) 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. The period to contest a citation may be extended by the division for cause.

~~[(f)]~~ (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 it becomes final.

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

~~[(h)]~~ (g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

~~[(i)]~~ (h) Fines shall be assessed by the director or his designee according to the following:

- (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
- (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and
- (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.

~~[(j)]~~ (i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(i), 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 58-55-501(1), (2), ~~[(or)]~~ (3), (9), (10), or (12); or

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

(II) no final order has been issued by the division in the action initiated under Subsection (4)~~[(j)]~~ (i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)~~[(j)]~~ (i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-501(1), (2), ~~[(or)]~~ (3), (9), (10), or (12); 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.

(5) Any penalty imposed by the director under Subsection (4)[(†)] (h) shall be deposited into the Commerce Service Fund. Any penalty which 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. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

Section 7. Repealer.

This act repeals:

Section 58-55-309, Monetary limit.