

28 respect to any matter for which application, notification, or reporting is required under this chapter
29 or rules adopted under this chapter, including applying to the division for a new license to engage
30 in a new specialty classification or to do business under a new form of organization or business
31 structure, filing with the division current financial statements, notifying the division concerning
32 loss of insurance coverage, or change in qualifier.

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

40 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), or
41 (3), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation
42 in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in
43 addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-501(1),
44 (2), or (3).

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

47 (b) Each citation shall be in writing and describe with particularity the nature of the
48 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
49 violated. The citation shall clearly state that the recipient must notify the division in writing within
50 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
51 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
52 explain the consequences of failure to timely contest the citation or to make payment of any fines
53 assessed by the citation within the time specified in the citation.

54 (c) The division may issue a notice in lieu of a citation.

55 (d) Each citation issued under this section, or a copy of each citation, may be served upon
56 any person upon whom a summons may be served in accordance with the Utah Rules of Civil
57 Procedure and may be made personally or upon his agent by a division investigator or by any
58 person specially designated by the director or by mail.

59 (e) If within 20 calendar days from the service of a citation, the person to whom the
60 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
61 order of the division and is not subject to further agency review. The period to contest a citation
62 may be extended by the division for cause.

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

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

67 (h) No citation may be issued under this section after the expiration of six months
68 following the occurrence of any violation.

69 (i) Fines shall be assessed by the director or his designee according to the following:

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

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

72 (iii) for any subsequent offense handled pursuant to Subsection (4) (a), a fine of up to
73 \$2,000 for each day of continued offense.

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

76 (A) the division previously issued a final order determining that a person committed a first
77 or second offense in violation of Subsection 58-55-501(1), (2), or (3); or

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

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

81 (III) the division determines during an investigation that occurred after the initiation of the
82 action under Subsection (4)(j)(i)(B)(I) that the person committed a second or subsequent violation
83 of the provisions of Subsection 58-55-501(1), (2), or (3); and

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

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

89 (5) Any penalty imposed by the director under Subsection (4) (i) shall be deposited into

90 the Commerce Service Fund. Any penalty which is not paid may be collected by the director by
91 either referring the matter to a collection agency or bringing an action in the district court of the
92 county in which the person against whom the penalty is imposed resides or in the county where
93 the office of the director is located. Any county attorney or the attorney general of the state is to
94 provide legal assistance and advice to the director in any action to collect the penalty. In any
95 action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall
96 be awarded.

Legislative Review Note
as of 1-18-00 9:33 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel