

Representative J. Stuart Adams proposes the following substitute bill:

**CONTINUING EDUCATION FOR
CONTRACTORS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions of the Utah Construction Trades Licensing Act.

Highlighted Provisions:

This bill:

- ▶ provides that noncompliance with continuing education requirements for licensed contractors is unlawful conduct under the licensing act;
- ▶ provides for an exemption from the requirement; and
- ▶ provides for the issuance of a citation and other penalties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2005.

Utah Code Sections Affected:

AMENDS:

58-55-503, as last amended by Chapters 33 and 241, Laws of Utah 2002

58-55-501, as last amended by Chapters 198 and 257, Laws of Utah 2001

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



26 Section 1. Section **58-55-501** is amended to read:

27 **58-55-501. Unlawful conduct.**

28 Unlawful conduct includes:

29 (1) engaging in a construction trade, acting as a contractor, an alarm business or
30 company, or an alarm company agent, or representing oneself to be engaged in a construction
31 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
32 person doing any of these is appropriately licensed or exempted from licensure under this
33 chapter;

34 (2) acting in a construction trade, as an alarm business or company, or as an alarm
35 company agent beyond the scope of the license held;

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

40 (4) applying for or obtaining a building permit either for oneself or another when not
41 licensed or exempted from licensure as a contractor under this chapter;

42 (5) issuing a building permit to any person for whom there is no evidence of a current
43 license or exemption from licensure as a contractor under this chapter;

44 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
45 other person who is required to be licensed under this chapter but who is not licensed or is
46 otherwise not entitled to obtain or receive the benefit of the building permit;

47 (7) failing to obtain a building permit when required by law or rule;

48 (8) submitting a bid for any work for which a license is required under this chapter by a
49 person not licensed or exempted from licensure as a contractor under this chapter;

50 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
51 with an application to obtain or renew a license under this chapter;

52 (10) allowing one's license to be used by another except as provided by statute or rule;

53 (11) doing business under a name other than the name appearing on the license, except
54 as permitted by statute or rule;

55 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
56 journeyman plumber, residential journeyman plumber, journeyman electrician, master

57 electrician, or residential electrician, failing to directly supervise an apprentice under one's
58 supervision or exceeding the number of apprentices one is allowed to have under his
59 supervision;

60 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
61 funds in payment for a specific project from an owner or any other person, which funds are to
62 pay for work performed or materials and services furnished for that specific project, and after
63 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
64 amounts due and payable to persons who performed work or furnished materials or services
65 within a reasonable period of time;

66 (14) employing as an alarm company an unlicensed individual as an alarm company
67 agent, except as permitted under the exemption from licensure provisions under Section
68 58-1-307;

69 (15) if licensed as an alarm company or alarm company agent, filing with the division
70 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
71 false or fraudulent and intended to mislead the division in its consideration of the applicant for
72 licensure;

73 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

- 74 (a) the building or construction laws of this state or any political subdivision;
- 75 (b) the safety and labor laws applicable to a project;
- 76 (c) any provision of the health laws applicable to a project;
- 77 (d) the workers' compensation insurance laws of the state applicable to a project;
- 78 (e) the laws governing withholdings for employee state and federal income taxes,
79 unemployment taxes, FICA, or other required withholdings; or
- 80 (f) reporting, notification, and filing laws of this state or the federal government;

81 (17) aiding or abetting any person in evading the provisions of this chapter or rules
82 established under the authority of the division to govern this chapter;

83 (18) engaging in the construction trade or as a contractor for the construction of
84 residences of up to two units when not currently registered or exempt from registration as a
85 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
86 Fund Act;

87 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a

88 written contract the notification required in Section 38-11-108; [or]

89 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25[-]; or

90 (21) if licensed as a contractor, not completing a three-hour core education class and an

91 additional ~~1~~ **THREE** hours of professional education approved by the division and the
91a Construction

92 Services Commission within each two-year renewal cycle. **§ BEGINNING WITH THE TWO-YEAR**

92a RENEWAL CYCLE THAT STARTS JULY 1, 2005, AND ENDS JUNE 30, 2007 § unless an exemption has been

93 granted to the licensee by the Construction Services Commission, with the concurrence of the

94 division ~~1~~ , EXCEPT THAT THIS SUBSECTION (21) IS REPEALED EFFECTIVE JULY 1, 2010 ~~1~~ **§ AND**

94a ITS IMPLEMENTATION IS SUBJECT TO THE DIVISION RECEIVING ADEQUATE FUNDING FOR ITS

94b IMPLEMENTATION THROUGH A LEGISLATIVE APPROPRIATION § .

95 Section 2. Section **58-55-503** is amended to read:

96 **58-55-503. Penalty for unlawful conduct -- Citations.**

97 (1) Any person who violates Subsection 58-55-308(2) or Subsection 58-55-501(1), (2),
98 (3), (4), (5), (6), (7), (9), (10), (12), (14), or (15), or who fails to comply with a citation issued
99 under this section after it is final, is guilty of a class A misdemeanor. Any person who violates
100 the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract
101 for the performance of the work.

102 (2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an
103 infraction unless the violator did so with the intent to deprive the person to whom money is to
104 be paid of the money received, in which case the violator is guilty of theft, as classified in
105 Section 76-6-412.

106 (3) Grounds for immediate suspension of the licensee's license by the division and the
107 commission include the issuance of a citation for violation of Subsection 58-55-308(2) or
108 Section 58-55-501 or the failure by a licensee to make application to, report to, or notify the
109 division with respect to any matter for which application, notification, or reporting is required
110 under this chapter or rules adopted under this chapter, including applying to the division for a
111 new license to engage in a new specialty classification or to do business under a new form of
112 organization or business structure, filing with the division current financial statements,
113 notifying the division concerning loss of insurance coverage, or change in qualifier.

114 (4) (a) If upon inspection or investigation, the division concludes that a person has
115 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
116 (10), (12), (14), (19), (21) or any rule or order issued with respect to these subsections, and that
117 disciplinary action is appropriate, the director or the director's designee from within the
118 division shall promptly issue a citation to the person according to this chapter and any pertinent

119 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
 120 adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures
 121 Act.

122 (i) Any person who is in violation of the provisions of Subsection 58-55-308(2) or
 123 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (21) as evidenced by an
 124 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
 125 proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in
 126 lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2) or Subsection
 127 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (21).

128 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
 129 58-55-401 may not be assessed through a citation.

130 (iii) (A) A person who receives a citation or is fined for violating Subsection
 131 58-55-501 ~~H~~ [(2)] (21) ~~h~~ may also be issued a cease and desist order from engaging in work to be
 132 performed by a contractor licensed under this chapter unless the person meets the continuing
 133 education requirement within 30 days after receipt of the citation or fine.

134 (B) The order, if issued, shall be removed upon the person's completion of the
 135 continuing education requirement.

135a **H (C) THIS SUBSECTION (4)(A)(III) IS REPEALED EFFECTIVE JULY 1, 2010. h**

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

143 (c) Each citation issued under this section, or a copy of each citation, may be served
 144 upon any person upon whom a summons may be served:

145 (i) in accordance with the Utah Rules of Civil Procedure;

146 (ii) personally or upon the person's agent by a division investigator or by any person
 147 specially designated by the director; or

148 (iii) by mail.

149 (d) If within 20 calendar days from the service of a citation, the person to whom the

150 citation was issued fails to request a hearing to contest the citation, the citation becomes the
151 final order of the division and is not subject to further agency review. The period to contest a
152 citation may be extended by the division for cause.

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

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

157 (g) No citation may be issued under this section after the expiration of six months
158 following the occurrence of any violation.

159 (h) Fines shall be assessed by the director or the director's designee according to the
160 following:

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

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

163 and

164 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
165 \$2,000 for each day of continued offense.

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

168 (A) the division previously issued a final order determining that a person committed a
169 first or second offense in violation of Subsection 58-55-308(2) or Subsection 58-55-501(1), (2),
170 (3), (9), (10), (12), (14), or (19); or

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

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

174 (III) the division determines during an investigation that occurred after the initiation of
175 the action under Subsection (4)(i)(B)(I) that the person committed a second or subsequent
176 violation of the provisions of Subsection 58-55-308(2) or Subsection 58-55-501(1), (2), (3),
177 (9), (10), (12), (14), or (19); and

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

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

183 (5) Any penalty imposed by the director under Subsection (4)(h) shall be deposited into
184 the Commerce Service Fund. Any penalty which is not paid may be collected by the director
185 by either referring the matter to a collection agency or bringing an action in the district court of
186 the county in which the person against whom the penalty is imposed resides or in the county
187 where the office of the director is located. Any county attorney or the attorney general of the
188 state is to provide legal assistance and advice to the director in any action to collect the penalty.
189 In any action brought to enforce the provisions of this section, reasonable attorney's fees and
190 costs shall be awarded.

191 Section 3. **Effective date.**

192 This bill takes effect on ~~H [January 1]~~ ~~§ [AUGUST 1]~~ ~~h~~ JULY 1 ~~§~~ , 2005.

Fiscal Note

Continuing Education for Contractors

02-Mar-04

Bill Number HB0105S016:56 PM

AMENDED BILL**State Impact**

By amendment, the first year of fiscal implementation is FY07. At that time, the bill will require an additional Customer Service Technician at a cost of \$44,100 in the first year and \$36,600 in the second from the Commerce Service Fund. Spending from the Commerce Service Fund could affect revenue available to the General Fund.

Individual and Business Impact

Contractors will be required to pay for continuing education and cover the lost work time.

Office of the Legislative Fiscal Analyst