

1                               **REGULATION OF CONSTRUCTION INDUSTRY**

2   2006 GENERAL SESSION

3   STATE OF UTAH

4                               **Chief Sponsor: Larry B. Wiley**

5                               Senate Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9               This bill modifies Title 58, Chapter 55, Utah Construction Trades Licensing Act.

10 **Highlighted Provisions:**

11               This bill:

- 12               ▶ defines "building inspector";
- 13               ▶ clarifies the owner-builder exemption from licensing;
- 14               ▶ allows a building inspector to issue a citation for a violation of Title 58, Chapter 55,
- 15               Utah Construction Trades Licensing Act;
- 16               ▶ provides that a fine based on a citation issued by a building inspector is generally
- 17               collected by the entity for which the building inspector performs an inspection;
- 18               ▶ requires a political subdivision to notify the Division of Occupational and
- 19               Professional Licensing of the outcome of any citation issued by the political
- 20               subdivision; and
- 21               ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23               None

24 **Other Special Clauses:**

25               None

26 **Utah Code Sections Affected:**

27 AMENDS:



28           **58-55-102**, as last amended by Chapter 206, Laws of Utah 2005  
 29           **58-55-305**, as last amended by Chapter 54, Laws of Utah 2005  
 30           **58-55-503**, as last amended by Chapter 45, Laws of Utah 2004



31  
 32 *Be it enacted by the Legislature of the state of Utah:*

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

34           **58-55-102. Definitions.**

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

36           (1) (a) "Alarm business or company" means a person engaged in the sale, installation,  
 37 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system,  
 38 except as provided in Subsection (1)(b).

39           (b) "Alarm business or company" does not include:

40           (i) a person engaged in the manufacture and sale of alarm systems when:

41           (A) that person is not engaged in the installation, maintenance, alteration, repair,  
 42 replacement, servicing, or monitoring of alarm systems[;]; and

43           (B) the manufacture or sale occurs only at a place of business established by the person  
 44 engaged in the manufacture or sale and does not involve site visits at the place or intended  
 45 place of installation of an alarm system; or

46           (ii) an owner of an alarm system, or an employee of the owner of an alarm system who  
 47 is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring  
 48 of the alarm system owned by that owner.

49           (2) "Alarm company agent" means any individual employed within this state by a  
 50 person engaged in the alarm business.

51           (3) "Alarm system" means equipment and devices assembled for the purpose of:

52           (a) detecting and signaling unauthorized intrusion or entry into or onto certain  
 53 premises; or

54           (b) signaling a robbery or attempted robbery on protected premises.

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

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

62 (6) "Approved supervision" means the immediate supervision of apprentices by  
63 qualified licensed electricians or plumbers as a part of a planned program of training.

64 (7) "Board" means the Electrician Licensing Board, Alarm System Security and  
65 Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

66 (8) "Building inspector" means a person licensed by the division under Section  
67 58-56-9.

68 [~~8~~] (9) "Combustion system" means an assembly consisting of:

69 (a) piping and components with a means for conveying, either continuously or  
70 intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the  
71 appliance;

72 (b) the electric control and combustion air supply and venting systems; and

73 (c) components intended to achieve control of quantity, flow, and pressure.

74 [~~9~~] (10) "Commission" means the Construction Services Commission created under  
75 Section 58-55-103.

76 [~~10~~] (11) "Construction trade" means any trade or occupation involving:

77 (a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition  
78 to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation  
79 or other project, development, or improvement to other than personal property; and

80 (ii) constructing, remodeling, or repairing a manufactured home or mobile home as  
81 defined in Section 58-56-3; or

82 (b) installation or repair of a residential or commercial natural gas appliance or  
83 combustion system.

84 [~~11~~] (12) "Construction trades instructor" means a person licensed under this chapter  
85 to teach one or more construction trades in both a classroom and project environment, where a  
86 project is intended for sale to or use by the public and is completed under the direction of the  
87 instructor, who has no economic interest in the project.

88 [~~12~~] (13) (a) "Contractor" means any person who for compensation other than wages  
89 as an employee undertakes any work in the construction, plumbing, or electrical trade for

90 which licensure is required under this chapter and includes:

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

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

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

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

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

101 (b) "Contractor" does not include an alarm company or alarm company agent.

102 [~~(13)~~] (14) (a) "Electrical trade" means the performance of any electrical work involved  
103 in the installation, construction, alteration, change, repair, removal, or maintenance of facilities,  
104 buildings, or appendages or appurtenances.

105 (b) "Electrical trade" does not include:

106 (i) transporting or handling electrical materials;

107 (ii) preparing clearance for raceways for wiring; or

108 (iii) work commonly done by unskilled labor on any installations under the exclusive  
109 control of electrical utilities.

110 (c) For purposes of Subsection [~~(13)~~] (14)(b):

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

113 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio  
114 permitted by this Subsection [~~(13)~~] (14)(c).

115 [~~(14)~~] (15) "Employee" means an individual as defined by the division by rule giving  
116 consideration to the definition adopted by the Internal Revenue Service and the Department of  
117 Workforce Services.

118 [~~(15)~~] (16) "Engage in a construction trade" means to:

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

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

123 [~~(16)~~] (17) (a) "Financial responsibility" means a demonstration of a current and  
124 expected future condition of financial solvency evidencing a reasonable expectation to the  
125 division and the board that an applicant or licensee can successfully engage in business as a  
126 contractor without jeopardy to the public health, safety, and welfare.

127 (b) Financial responsibility may be determined by an evaluation of the total history  
128 concerning the licensee or applicant including past, present, and expected condition and record  
129 of financial solvency and business conduct.

130 [~~(17)~~] (18) "Gas appliance" means any device that uses natural gas to produce light,  
131 heat, power, steam, hot water, refrigeration, or air conditioning.

132 [~~(18)~~] (19) (a) "General building contractor" means a person licensed under this  
133 chapter as a general building contractor qualified by education, training, experience, and  
134 knowledge to perform or superintend construction of structures for the support, shelter, and  
135 enclosure of persons, animals, chattels, or movable property of any kind or any of the  
136 components of that construction except plumbing, electrical work, mechanical work, and  
137 manufactured housing installation, for which the general building contractor shall employ the  
138 services of a contractor licensed in the particular specialty, except that a general building  
139 contractor engaged in the construction of single-family and multifamily residences up to four  
140 units may perform the mechanical work and hire a licensed plumber or electrician as an  
141 employee.

142 (b) The division may by rule exclude general building contractors from engaging in the  
143 performance of other construction specialties in which there is represented a substantial risk to  
144 the public health, safety, and welfare, and for which a license is required unless that general  
145 building contractor holds a valid license in that specialty classification.

146 [~~(19)~~] (20) (a) "General engineering contractor" means a person licensed under this  
147 chapter as a general engineering contractor qualified by education, training, experience, and  
148 knowledge to perform construction of fixed works in any of the following:

- 149 (i) irrigation[;];  
150 (ii) drainage[;];  
151 (iii) water[;];

152            (iv) power[;];  
153            (v) water supply[;];  
154            (vi) flood control[;];  
155            (vii) inland waterways[;];  
156            (viii) harbors[;];  
157            (ix) railroads[;];  
158            (x) highways[;];  
159            (xi) tunnels[;];  
160            (xii) airports and runways[;];  
161            (xiii) sewers and bridges[;];  
162            (xiv) refineries[;];  
163            (xv) pipelines[;];  
164            (xvi) chemical and industrial plants requiring specialized engineering knowledge and  
165 skill[;];

166            (xvii) piers[~~;~~and];  
167            (xviii) foundations[;]; or  
168            (xix) any of the components of [~~those~~] the works described in this Subsection (20).

169            (b) A general engineering contractor may not perform construction of structures built  
170 primarily for the support, shelter, and enclosure of persons, animals, and chattels.

171            [~~(20)~~] (21) "Immediate supervision" means reasonable direction, oversight, inspection,  
172 and evaluation of the work of a person, in or out of the immediate presence of the supervising  
173 person, so as to ensure that the end result complies with applicable standards.

174            [~~(21)~~] (22) "Individual" means a natural person.

175            [~~(22)~~] (23) "Journeyman electrician" means a person licensed under this chapter as a  
176 journeyman electrician having the qualifications, training, experience, and knowledge to wire,  
177 install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

178            [~~(23)~~] (24) "Journeyman plumber" means a person licensed under this chapter as a  
179 journeyman plumber having the qualifications, training, experience, and technical knowledge  
180 to engage in the plumbing trade.

181            [~~(24)~~] (25) "Master electrician" means a person licensed under this chapter as a master  
182 electrician having the qualifications, training, experience, and knowledge to properly plan,

183 layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment  
184 for light, heat, power, and other purposes.

185 ~~[(25)]~~ (26) "Person" means a natural person, sole proprietorship, joint venture,  
186 corporation, limited liability company, association, or organization of any type.

187 ~~[(26)]~~ (27) (a) "Plumbing trade" means the performance of any mechanical work  
188 pertaining to the installation, alteration, change, repair, removal, maintenance, or use in  
189 buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and  
190 fittings for:

191 (i) delivery of the water supply;

192 (ii) discharge of liquid and water carried waste; or

193 (iii) the building drainage system within the walls of the building.

194 (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes,  
195 fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof drains  
196 together with their devices, appurtenances, and connections where installed within the outside  
197 walls of the building.

198 ~~[(27)]~~ (28) (a) "Ratio of apprentices" means, for the purpose of determining  
199 compliance with the requirements for planned programs of training and electrician apprentice  
200 licensing applications, the shop ratio of apprentice electricians to journeyman or master  
201 electricians shall be one journeyman or master electrician to one apprentice on industrial and  
202 commercial work, and one journeyman or master electrician to three apprentices on residential  
203 work.

204 (b) On-the-job training shall be under circumstances in which the ratio of apprentices  
205 to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to  
206 three apprentices to one supervisor on residential projects.

207 ~~[(28)]~~ (29) "Residential and small commercial contractor" means a person licensed  
208 under this chapter as a residential and small commercial contractor qualified by education,  
209 training, experience, and knowledge to perform or superintend the construction of  
210 single-family residences, multifamily residences up to four units, and commercial construction  
211 of not more than three stories above ground and not more than 20,000 square feet, or any of the  
212 components of that construction except plumbing, electrical work, mechanical work, and  
213 manufactured housing installation, for which the residential and small commercial contractor

214 shall employ the services of a contractor licensed in the particular specialty, except that a  
215 residential and small commercial contractor engaged in the construction of single-family and  
216 multifamily residences up to four units may perform the mechanical work and hire a licensed  
217 plumber or electrician as an employee.

218 ~~[(29)]~~ (30) "Residential apprentice plumber" means a person licensed under this  
219 chapter as a residential apprentice plumber who is learning the residential plumbing trade while  
220 working on residential buildings under the approved supervision of a residential journeyman  
221 plumber or a journeyman plumber.

222 ~~[(30)]~~ (31) "Residential building," as it relates to the license classification of residential  
223 apprentice plumber and residential journeyman plumber, means a single or multiple family  
224 dwelling of up to four units.

225 ~~[(31)]~~ (32) "Residential journeyman electrician" means a person licensed under this  
226 chapter as a residential journeyman electrician having the qualifications, training, experience,  
227 and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat,  
228 power, and other purposes on buildings using primarily nonmetallic sheath cable.

229 ~~[(32)]~~ (33) "Residential journeyman plumber" means a person licensed under this  
230 chapter as a residential journeyman plumber having the qualifications, training, experience, and  
231 knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

232 ~~[(33)]~~ (34) "Residential master electrician" means a person licensed under this chapter  
233 as a residential master electrician having the qualifications, training, experience, and  
234 knowledge to properly plan, layout, and supervise the wiring, installation, and repair of  
235 electrical apparatus and equipment for light, heat, power, and other purposes on residential  
236 projects.

237 ~~[(34)]~~ (35) "Residential project," as it relates to an electrician or electrical contractor,  
238 means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard  
239 rules and regulations governing this work, including the National Electrical Code, and in which  
240 the voltage does not exceed 250 volts line to line and 125 volts to ground.

241 ~~[(35)]~~ (36) "Specialty contractor" means a person licensed under this chapter under a  
242 specialty contractor classification established by rule, who is qualified by education, training,  
243 experience, and knowledge to perform those construction trades and crafts requiring  
244 specialized skill, the regulation of which are determined by the division to be in the best



245 interest of the public health, safety, and welfare. A specialty contractor may perform work in  
 246 crafts or trades other than those in which ~~[he]~~ the speciality contractor is licensed if they are  
 247 incidental to the performance of ~~[his]~~ the specialty contractor's licensed craft or trade.

248 ~~[(36)]~~ (37) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

249 ~~[(37)]~~ (38) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502  
 250 and as may be further defined by rule.

251 ~~[(38)]~~ (39) "Wages" means amounts due to an employee for labor or services whether  
 252 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for  
 253 calculating the amount.

254 Section 2. Section **58-55-305** is amended to read:

255 **58-55-305. Exemptions from licensure.**

256 (1) In addition to the exemptions from licensure in Section 58-1-307, the following  
 257 persons may engage in acts or practices included within the practice of construction trades,  
 258 subject to the stated circumstances and limitations, without being licensed under this chapter:

259 (a) an authorized representative of the United States government or an authorized  
 260 employee of the state or any of its political subdivisions when working on construction work of  
 261 the state or the subdivision, and when acting within the terms of the person's trust, office, or  
 262 employment;

263 (b) a person engaged in construction or operation incidental to the construction and  
 264 repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation  
 265 districts, and drainage districts or construction and repair relating to farming, dairying,  
 266 agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel  
 267 excavations, well drilling, as defined in Subsection 73-3-24(3), hauling to and from  
 268 construction sites, and lumbering;

269 (c) public utilities operating under the rules of the Public Service Commission on  
 270 construction work incidental to their own business;

271 (d) ~~[sole owners]~~ a natural person who is the sole owner of property engaged in  
 272 building:

273 (i) no more than one residential structure per year and no more than three residential  
 274 structures per five years on ~~[their]~~ the person's property for ~~[their]~~ the person's own  
 275 noncommercial, nonpublic use; except, a person other than the property owner or individuals

276 described in Subsection (1)(e), who engages in building the structure must be licensed under  
277 this chapter if the person is otherwise required to be licensed under this chapter; or

278 (ii) structures on their property for their own noncommercial, nonpublic use [~~which~~]  
279 that are incidental to a residential structure on the property, including sheds, carports, or  
280 detached garages;

281 (e) (i) a person engaged in construction or renovation of a residential building for  
282 noncommercial, nonpublic use if that person:

283 (A) works without compensation other than token compensation that is not considered  
284 salary or wages; and

285 (B) works under the direction of the property owner who engages in building the  
286 structure;

287 (ii) for purposes of this Subsection (1)(e), "token compensation" means compensation  
288 paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person  
289 exempted from licensure under this Subsection (1)(e), that is:

290 (A) minimal in value when compared with the fair market value of the services  
291 provided by the person;

292 (B) not related to the fair market value of the services provided by the person; and

293 (C) is incidental to providing of services by the person including paying for or  
294 providing meals or refreshment while services are being provided, or paying reasonable  
295 transportation costs incurred by the person in travel to the site of construction;

296 (f) a person engaged in the sale or merchandising of personal property that by its design  
297 or manufacture may be attached, installed, or otherwise affixed to real property who has  
298 contracted with a person, firm, or corporation licensed under this chapter to install, affix, or  
299 attach that property;

300 (g) a contractor submitting a bid on a federal aid highway project, if, before  
301 undertaking construction under that bid, the contractor is licensed under this chapter;

302 (h) (i) a person engaged in the alteration, repair, remodeling, or addition to or  
303 improvement of a building with a contracted or agreed value of less than \$1,000, including  
304 both labor and materials, and including all changes or additions to the contracted or agreed  
305 upon work;

306 (ii) notwithstanding Subsection (1)(h)(i):

307 (A) work in the plumbing and electrical trades must be performed by a licensed  
308 electrician or plumber except as otherwise provided in this section;

309 (B) installation, repair, or replacement of a residential or commercial gas appliance or a  
310 combustion system must be performed by a person who has received certification under  
311 Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or  
312 58-55-308(3); and

313 (C) installation, repair, or replacement of water-based fire protection systems must be  
314 performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;

315 (i) a person practicing a specialty contractor classification or construction trade which  
316 is not classified by rule by the director as significantly impacting the public's health, safety, and  
317 welfare;

318 (j) owners and lessees of property and persons regularly employed for wages by owners  
319 or lessees of property or their agents for the purpose of maintaining the property, are exempt  
320 from this chapter when doing work upon the property;

321 (k) (i) a person engaged in minor plumbing work incidental to the replacement or  
322 repair of a fixture or an appliance in a residential or small commercial building, or structure  
323 used for agricultural use, as defined in Section 58-56-4, provided that no modification is made  
324 to:

325 (A) existing culinary water, soil, waste, or vent piping; or

326 (B) a gas appliance or combustion system; and

327 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or  
328 an appliance is not included in the exemption provided under Subsection (1)(k)(i);

329 (l) a person who ordinarily would be subject to the plumber licensure requirements  
330 under this chapter when installing or repairing a water conditioner or other water treatment  
331 apparatus if the conditioner or apparatus:

332 (i) meets the appropriate state construction codes or local plumbing standards; and

333 (ii) is installed or repaired under the direction of a person authorized to do the work  
334 under an appropriate specialty contractor license;

335 (m) a person who ordinarily would be subject to the electrician licensure requirements  
336 under this chapter when employed by or under contract with:

337 (i) railroad corporations, telephone corporations or their corporate affiliates, elevator

338 contractors or constructors, or street railway systems; or

339 (ii) public service corporations, rural electrification associations, or municipal utilities  
340 who generate, distribute, or sell electrical energy for light, heat, or power;

341 (n) a person involved in minor electrical work incidental to a mechanical or service  
342 installation;

343 (o) a student participating in construction trade education and training programs  
344 approved by the commission with the concurrence of the director under the condition that:

345 (i) all work intended as a part of a finished product on which there would normally be  
346 an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed  
347 building inspector; and

348 (ii) a licensed contractor obtains the necessary building permits; and

349 (p) a delivery person when replacing any of the following existing equipment with a  
350 new gas appliance, provided there is an existing gas shutoff valve at the appliance:

351 (i) gas range;

352 (ii) gas dryer;

353 (iii) outdoor gas barbeque; or

354 (iv) outdoor gas patio heater.

355 (2) (a) A compliance agency as defined in Subsection 58-56-3(4) that issues a building  
356 permit to any person requesting a permit as a sole owner of property referred to in Subsection  
357 (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of  
358 the permit.

359 (b) The division shall evaluate the effectiveness of the notification requirement under  
360 Subsection (2)(a) and report its findings, including any recommendations for modification to or  
361 termination of the requirement, to the Legislature's Business and Labor Interim Committee  
362 prior to the 2008 General Session.

363 Section 3. Section **58-55-503** is amended to read:

364 **58-55-503. Penalty for unlawful conduct -- Citations.**

365 (1) (a) Any person who violates Subsection 58-55-308(2) or Subsection 58-55-501(1),  
366 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), or (15), or who fails to comply with a citation  
367 issued under this section after it is final, is guilty of a class A misdemeanor.

368 (b) Any person who violates the provisions of Subsection 58-55-501(8) may not be

369 awarded and may not accept a contract for the performance of the work.

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

374 (3) Grounds for immediate suspension of the licensee's license by the division and the  
375 commission include:

376 (a) the issuance of a citation for violation of Subsection 58-55-308(2) or Section  
377 58-55-501; or

378 (b) the failure by a licensee to make application to, report to, or notify the division with  
379 respect to any matter for which application, notification, or reporting is required under this  
380 chapter or rules adopted under this chapter, including:

381 (i) applying to the division for a new license to engage in a new specialty classification  
382 or to do business under a new form of organization or business structure[;];

383 (ii) filing with the division current financial statements[;]; or

384 (iii) notifying the division concerning loss of insurance coverage, or change in  
385 qualifier.

386 (4) (a) If upon inspection or investigation, the division or building inspector concludes  
387 that a person has violated [~~the provisions of~~] Subsection 58-55-308(2) or Subsections  
388 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), and (21) or any rule or order issued with  
389 respect to these subsections, and that disciplinary action is appropriate[;];

390 (i) the director or the director's designee from within the division shall:

391 (A) promptly issue a citation to the person according to this chapter and any pertinent  
392 rules[;];

393 (B) attempt to negotiate a stipulated settlement[;]; or

394 (C) notify the person to appear before an adjudicative proceeding conducted under  
395 Title 63, Chapter 46b, Administrative Procedures Act[;]; or

396 (ii) the building inspector may promptly issue a citation to the person according to this  
397 chapter and any pertinent rules.

398 [(i)] (b) Any person who [~~is in violation of the provisions of~~] violates Subsection  
399 58-55-308(2) or Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or (21) as

400 evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an  
401 adjudicative proceeding[;]:

402 (i) may be assessed a fine pursuant to this Subsection (4); and

403 (ii) may, in addition to or in lieu of the fine, be ordered to cease and desist from  
404 violating Subsection 58-55-308(2) or Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14),  
405 (19), or (21).

406 [(ii)] (c) Except for a cease and desist order, the licensure sanctions cited in Section  
407 58-55-401 may not be assessed through a citation.

408 [(iii)-(A)] (d) (i) A person who receives a citation or is fined for violating Subsection  
409 58-55-501(21) may also be issued a cease and desist order from engaging in work to be  
410 performed by a contractor licensed under this chapter unless the person meets the continuing  
411 education requirement within 30 days after receipt of the citation or fine.

412 [(B)] (ii) The order, if issued, shall be removed upon the person's completion of the  
413 continuing education requirement.

414 [(C)] (iii) This Subsection (4)[(a)(iii)](d) is repealed effective July 1, 2010.

415 (e) (i) Unless otherwise agreed upon by the division and political subdivision, a  
416 citation issued by the division or political subdivision shall be adjudicated by the entity that  
417 issued the citation.

418 (ii) If a political subdivision issues a citation, the political subdivision shall notify the  
419 division of the outcome as soon as practicable after the issuance of the citation, unless the  
420 citation is transferred to the division under Subsection (4)(e)(i).

421 [(b)] (f) Each citation shall:

422 (i) be in writing [~~and~~];

423 (ii) describe with particularity the nature of the violation, including a reference to the  
424 provision of the chapter, rule, or order alleged to have been violated[~~-. The citation shall~~];

425 (iii) clearly state that the recipient must notify the division or political subdivision in  
426 writing within 20 calendar days of service of the citation if the recipient wishes to contest the  
427 citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act[~~-~~  
428 ~~The citation shall~~]; and

429 (iv) clearly explain the consequences of failure to timely contest the citation or to make  
430 payment of any fines assessed by the citation within the time specified in the citation.

431           ~~[(e)]~~ (g) Each citation issued under this section, or a copy of each citation, may be  
432 served upon any person upon whom a summons may be served:

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

434           (ii) personally or upon the person's agent by:

435           (A) a division investigator ~~[or by]~~;

436           (B) any person specially designated by the director; or

437           (C) a building inspector; or

438           (iii) by mail.

439           ~~[(d)]~~ (h) (i) If within 20 calendar days from the service of a citation, the person to  
440 whom the citation ~~[was]~~ is issued fails to request a hearing to contest the citation, the citation  
441 becomes the final order of the division or political subdivision and is not subject to further  
442 agency review.

443           (ii) The period to contest a citation may be extended by the division or political  
444 subdivision for cause.

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

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

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

451           ~~[(h)]~~ (l) Fines shall be assessed by the director ~~[or]~~, the director's designee, or political  
452 subdivision according to the following:

453           (i) for a first offense handled pursuant to ~~[Subsection]~~ Subsections (4)(a) through (c), a  
454 fine of up to \$1,000;

455           (ii) for a second offense handled pursuant to ~~[Subsection]~~ Subsections (4)(a) through  
456 (c), a fine of up to \$2,000; and

457           (iii) for any subsequent offense handled pursuant to ~~[Subsection]~~ Subsections (4)(a)  
458 through (c), a fine of up to \$2,000 for each day of continued offense.

459           ~~[(i)]~~ (m) (i) For purposes of issuing a final order under this section and assessing a fine  
460 under Subsection (4)~~[(i)]~~(l), an offense constitutes a second or subsequent offense if:

461           (A) the division or political subdivision previously issued a final order determining that

462 a person committed a first or second offense in violation of Subsection 58-55-308(2) or  
463 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19); or

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

466 (II) no final order has been issued by the division or political subdivision in the action  
467 initiated under Subsection (4)[(†)](m)(i)(B)(I);

468 (III) the division or political subdivision determines during an investigation that  
469 occurred after the initiation of the action under Subsection (4)[(†)](m)(i)(B)(I) that the person  
470 committed a second or subsequent violation of [~~the provisions of~~] Subsection 58-55-308(2) or  
471 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19); and

472 (IV) after determining that the person committed a second or subsequent offense under  
473 Subsection (4)[(†)](m)(i)(B)(III), the division or political subdivision issues a final order on the  
474 action initiated under Subsection (4)[(†)](m)(i)(B)(I).

475 (ii) In issuing a final order for a second or subsequent offense under Subsection  
476 (4)[(†)](m)(i), the division or political subdivision shall comply with the requirements of this  
477 section.

478 (5) [~~Any penalty~~] (a) (i) Unless otherwise agreed upon by the division and political  
479 subdivision, a fine imposed by the director or political subdivision under Subsection (4)[(†)](I)  
480 shall be collected by the entity that issued the citation.

481 (ii) A fine collected by the division under Subsection (5)(a)(i) shall be deposited into  
482 the Commerce Service Fund.

483 (iii) A fine collected by a political subdivision under Subsection (5)(a)(i) shall be  
484 deposited into a fund and shall be expended only for the enforcement of provisions concerning  
485 the construction trades, including for legal enforcement costs and for training building  
486 inspectors.

487 (b) Any penalty [~~which~~] that is not paid may be collected by the director or political  
488 subdivision by [either]:

489 (i) referring the matter to a collection agency; or

490 (ii) bringing an action in the district court;

491 (A) of the county in which the person against whom the penalty is imposed resides; or

492 (B) in the county where the director's office [of the director] or political subdivision is



493 located.

494           (c) Any county attorney or the attorney general of the state is to provide legal  
495 assistance and advice to the director in any action to collect the penalty.

496           (d) In any action brought to enforce [~~the provisions of~~] this section, reasonable  
497 attorney's fees and costs shall be awarded.

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**Legislative Review Note**

as of 1-24-06 3:23 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**