

1 **UTAH UNIFORM BUILDING STANDARDS ACT**

2 **AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

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

6 **Senate Sponsor: Scott D. McCoy**

7

LONG TITLE

8 **General Description:**

9
10 This bill modifies provisions of the Utah Uniform Building Standards Act related to
11 unlawful and unprofessional conduct by building inspectors and factory built housing
12 dealers and provides penalties for that conduct, to include the issuing of citations to
13 violators by the Division of Occupational and Professional Licensing.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines unlawful and unprofessional conduct for purposes of the Utah Uniform
- 17 Building Standards Act, specifically as related to building inspectors and factory
- 18 built housing set-up contractors;
- 19 ▶ provides the Division of Occupational and Professional Licensing with authority to
- 20 issue citations to persons who violate the unlawful conduct provisions of the Utah
- 21 Uniform Building Standards Act;
- 22 ▶ provides grounds for the immediate suspension of a licensee's license by the
- 23 division to include the issuance of a citation for violations of unlawful conduct;
- 24 ▶ provides that the division may issue cease and desist orders and assess fines for
- 25 violating the unlawful conduct provisions of the Utah Uniform Building Standards
- 26 Act; and
- 27 ▶ provides a procedure for the collection of unpaid fines.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **58-56-3**, as last amended by Chapter 75, Laws of Utah 2004

35 ENACTS:

36 **58-56-9.1**, Utah Code Annotated 1953

37 **58-56-9.3**, Utah Code Annotated 1953

38 **58-56-9.5**, Utah Code Annotated 1953



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

41 Section 1. Section **58-56-3** is amended to read:

42 **58-56-3. Definitions.**

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

44 (1) "Building" means a structure used or intended for supporting or sheltering any use
45 or occupancy and any improvements attached to it.

46 (2) "Code(s)" means the following codes, including the standards and specifications
47 contained in them:

48 (a) codes adopted by the commission under Subsection 58-56-4(2); and

49 (b) codes approved by the commission under Subsection 58-56-4(4)(a).

50 (3) "Commission" means the Uniform Building Code Commission created under this
51 chapter.

52 (4) "Compliance agency" means an agency of the state or any of its political
53 subdivisions which issues permits for construction regulated under the codes, or any other
54 agency of the state or its political subdivisions specifically empowered to enforce compliance
55 with the codes.

56 (5) "Factory built housing" means manufactured homes or mobile homes.

57 (6) (a) "Factory built housing set-up contractor" means an individual licensed by the
58 division to set up or install factory built housing on a temporary or permanent basis.

59 (b) The scope of the work included under the license includes the placement [~~and~~] or
60 securing, or both placement and securing, of the factory built housing on a permanent or
61 temporary foundation, securing the units together if required, and connection of the utilities to
62 the factory built housing unit, but does not include site preparation, construction of a
63 permanent foundation, and construction of utility services to the near proximity of the factory
64 built housing unit.

65 (c) If a dealer is not licensed as a factory built housing set-up contractor, that individual
66 must subcontract the connection services to individuals who are licensed by the division to
67 perform those specific functions under Title 58, Chapter 55, Utah Construction Trades
68 Licensing Act.

69 (7) "HUD code" means the National Manufactured Housing Construction and Safety
70 Standards Act, 42 U.S.C. Sec. 5401 et seq.

71 (8) "Local regulator" means each political subdivision of the state which is empowered
72 to engage in the regulation of construction, alteration, remodeling, building, repair, and other
73 activities subject to the codes.

74 (9) (a) "Manufactured home" means a transportable factory built housing unit
75 constructed on or after June 15, 1976, according to the HUD Code, in one or more sections,
76 which[;]:

77 (i) in the traveling mode, is eight body feet or more in width or 40 body feet or more in
78 length, or when erected on site, is 400 or more square feet[;]; and [~~which~~]

79 (ii) is built on a permanent chassis and designed to be used as a dwelling with or
80 without a permanent foundation when connected to the required utilities, and includes the
81 plumbing, heating, air-conditioning, and electrical systems.

82 (b) Manufactured homes constructed on or after June 15, 1976, shall be identifiable by
83 the manufacturer's data plate bearing the date the unit was manufactured and a HUD label
84 attached to the exterior of the home certifying the home was manufactured to HUD standards.

85 (10) "Mobile home" means a transportable factory built housing unit built prior to June
86 15, 1976, in accordance with a state mobile home code which existed prior to the HUD Code.

87 (11) "Modular unit" means a structure built from sections which are manufactured in
88 accordance with the construction standards adopted pursuant to Section 58-56-4 and
89 transported to a building site, the purpose of which is for human habitation, occupancy, or use.

90 (12) "Opinion" means a written, nonbinding, and advisory statement issued by the
91 commission concerning an interpretation of the meaning of the codes or the application of the
92 codes in a specific circumstance issued in response to a specific request by a party to the issue.

93 (13) "State regulator" means an agency of the state which is empowered to engage in
94 the regulation of construction, alteration, remodeling, building, repair, and other activities
95 subject to the codes adopted pursuant to this chapter.

96 [~~(14) "Unlawful conduct" is as defined in Subsection 58-1-501(1) and includes:~~]

97 [~~(a) engaging in the sale of factory built housing without being registered with the
98 division as a dealer, unless the sale is exempt under Section 58-56-16; and]~~

99 [~~(b) selling factory built housing within the state as a dealer without collecting and
100 remitting to the division the fee required by Section 58-56-17.~~]

101 [~~(15) "Unprofessional conduct" is as defined in Subsection 58-1-501(2) and includes:~~]

102 [~~(a) any nondelivery of goods or services by a registered dealer which constitutes a
103 breach of contract by the dealer;~~]

104 [~~(b) the failure of a registered dealer to pay a subcontractor or supplier any amounts to
105 which that subcontractor or supplier is legally entitled; and]~~

106 [~~(c) any other activity which is defined as unprofessional conduct by division rule in
107 accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking
108 Act.~~]

109 Section 2. Section **58-56-9.1** is enacted to read:

110 **58-56-9.1. Unlawful conduct.**

111 Unlawful conduct is as defined in Subsection 58-1-501(1) and includes:

112 (1) engaging in the sale of factory built housing without being registered with the
113 division as a dealer, unless the sale is exempt under Section 58-56-16;

114 (2) selling factory built housing within the state as a dealer without collecting and
115 remitting to the division the fee required by Section 58-56-17;

116 (3) acting as a building inspector or representing oneself to be acting as a building
117 inspector, unless licensed or exempted from licensure under this chapter or using the title
118 building inspector or any other description, words, letters, or abbreviation indicating that the
119 person is a building inspector if the person has not been licensed under this chapter;

120 (4) acting as a building inspector beyond the scope of the license held under this

121 chapter; and

122 (5) hiring or employing in any manner an unlicensed person as a building inspector,
123 unless exempted from licensure under this chapter.

124 Section 3. Section **58-56-9.3** is enacted to read:

125 **58-56-9.3. Unprofessional conduct.**

126 Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

127 (1) knowingly failing to inspect or issue correction notices for code violations which
128 when left uncorrected would constitute a hazard to the public health and safety and knowingly
129 failing to require that correction notices are complied with as a building inspector;

130 (2) the use of alcohol or the illegal use of drugs while performing duties as a building
131 inspector or at any time to the extent that the inspector is physically or mentally impaired and
132 unable to effectively perform the duties of an inspector;

133 (3) gross negligence in the performance of official duties as a building inspector;

134 (4) the personal use of information or knowingly revealing information to unauthorized
135 persons when that information has been obtained by a building inspector as a result of the
136 inspector's employment, work, or position as an inspector;

137 (5) unlawful acts or practices which are clearly unethical under generally recognized
138 standards of conduct of a building inspector;

139 (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance
140 of duties and responsibilities as a building inspector;

141 (7) a building inspector knowingly failing to require that all plans, specifications,
142 drawings, documents, and reports be stamped by architects, professional engineers, or both as
143 established by law;

144 (8) a building inspector knowingly failing to report to the division an act or omission of
145 a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when
146 left uncorrected constitutes a hazard to public health and safety;

147 (9) a building inspector knowingly failing to report to the division unlicensed practice
148 persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades
149 Licensing Act;

150 (10) a building inspector's approval of work which materially varies from approved
151 documents that have been stamped by an architect, professional engineer, or both unless

152 authorized by the licensed architect, professional engineer, or both;

153 (11) a building inspector failing to produce verification of current licensure and current
154 certifications for the codes adopted under rules of the division upon request of the division, a
155 compliance agency, or a contractor or property owner whose work is being inspected;

156 (12) nondelivery of goods or services by a registered dealer which constitutes a breach
157 of contract by the dealer;

158 (13) the failure of a registered dealer to pay a subcontractor or supplier any amounts to
159 which that subcontractor or supplier is legally entitled; and

160 (14) any other activity which is defined as unprofessional conduct by division rule in
161 accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

162 Section 4. Section **58-56-9.5** is enacted to read:

163 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

164 (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with
165 a citation issued under this section after it is final is guilty of a class A misdemeanor.

166 (2) Grounds for immediate suspension of a licensee's license by the division under this
167 chapter include:

168 (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and

169 (b) failure by a licensee to make application to, report to, or notify the division with
170 respect to a matter for which application, notification, or reporting is required under this
171 chapter or rules made under this chapter by the division.

172 (3) (a) If upon inspection or investigation, the division concludes that a person has
173 violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section,
174 and that disciplinary action is appropriate, the director or the director's designee from within
175 the division shall:

176 (i) promptly issue a citation to the person according to this chapter and any pertinent
177 rules;

178 (ii) attempt to negotiate a stipulated settlement; or

179 (iii) notify the person to appear before an adjudicative proceeding conducted under
180 Title 63, Chapter 46b, Administrative Procedures Act.

181 (b) (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an
182 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative

183 proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or
184 instead of the fine, be ordered by the division to cease from violating the provision.

185 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
186 licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.

187 (c) (i) Each citation shall be in writing and describe with particularity the nature of the
188 violation, including a reference to the provision of the chapter, rule, or order alleged to have
189 been violated.

190 (ii) the citation shall clearly state that the recipient must notify the division in writing
191 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
192 at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act.

193 (iii) The citation shall clearly explain the consequences of failure to timely contest the
194 citation or to make payment of any fines assessed by the citation within the time specified in
195 the citation.

196 (d) Each citation issued under this section, or a copy of each citation, may be served
197 upon any person upon whom a summons may be served:

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

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

201 (iii) by mail.

202 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
203 citation was issued fails to request a hearing to contest the citation, the citation becomes the
204 final order of the division and is not subject to further agency review.

205 (ii) The period to contest a citation may be extended by the division for cause.

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

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

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

212 (i) The director or the director's designee may assess fines for violations of Section
213 58-56-9.1 as follows:

214 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;
215 (ii) for a second offense, a fine of up to \$2,000; and
216 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
217 offense.

218 (j) For the purposes of issuing a final order under this section and assessing a fine
219 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

220 (i) the division previously issued a final order determining that a person committed a
221 first or second offense in violation of a provision of Section 58-56-9.1; or

222 (ii) (A) the division initiated an action for a first or second offense;

223 (B) no final order has been issued by the division in the action initiated under
224 Subsection (3)(j)(ii)(A);

225 (C) the division determines during an investigation that occurred after the initiation of
226 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
227 violation of a provision of Section 58-56-9.1; and

228 (D) after determining that the person committed a second or subsequent offense under
229 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under
230 Subsection (3)(j)(ii)(A).

231 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
232 the division shall comply with the requirements of this section.

233 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
234 Commerce Service Fund.

235 (b) The director may collect an unpaid fine by:

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

237 (ii) bringing an action in the district court of the county in which the person resides or
238 in the county where the director's office is located.

239 (c) (i) The state's attorney general or a county attorney shall provide legal assistance
240 and advice to the director in an action brought under Subsection (4)(b).

241 (ii) Reasonable attorney's fees and costs shall be awarded in an action brought to
242 enforce the provisions of this section.

Legislative Review Note
as of 1-8-07 3:57 PM

Office of Legislative Research and General Counsel

H.B. 135 - Utah Uniform Building Standards Act Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. Enactment may generate an estimated \$5,000 in fine revenues to the Commerce Service Fund the first year, with a lower, but indeterminate amount in following years. Revenue to the Commerce Service Fund could affect revenue available to the General Fund.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
Commerce Service Fund	\$0	\$0	\$0	\$0	\$5,000	\$0
Total	\$0	\$0	\$0	\$0	\$5,000	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.