

1 **CRANE SAFETY AMENDMENTS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gene Davis**

5 House Sponsor: James A. Dunnigan

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Utah Construction Trades Licensing Act dealing
10 with the definition of a crane operator and the penalties for unlawful conduct provisions
11 of the act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies the definition of a crane operator as related to the description of the type of
15 crane used on a commercial construction project for which the crane operator must
16 be certified to operate;
- 17 ▶ provides penalties for a violation of the crane operator's certification provision in
18 the Utah Construction Trades Licensing Act; and
- 19 ▶ makes certain technical changes.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill takes effect on July 1, 2007.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **58-55-503**, as last amended by Chapter 45, Laws of Utah 2004

27 **58-55-504 (Effective 07/01/07)**, as enacted by Chapter 124, Laws of Utah 2006

28
29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **58-55-503** is amended to read:

31 **58-55-503. Penalty for unlawful conduct -- Citations.**

32 (1) (a) (i) [~~Any~~] A person who violates Subsection 58-55-308(2) [~~or~~], Subsection
33 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), or (15), or Subsection
34 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
35 guilty of a class A misdemeanor. [~~Any~~]

36 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
37 individual and does not include a sole proprietorship, joint venture, corporation, limited
38 liability company, association, or organization of any type.

39 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
40 awarded and may not accept a contract for the performance of the work.

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

45 (3) Grounds for immediate suspension of the licensee's license by the division and the
46 commission include the issuance of a citation for violation of Subsection 58-55-308(2) [~~or~~],
47 Section 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application
48 to, report to, or notify the division with respect to any matter for which application,
49 notification, or reporting is required under this chapter or rules adopted under this chapter,
50 including applying to the division for a new license to engage in a new specialty classification
51 or to do business under a new form of organization or business structure, filing with the
52 division current financial statements, notifying the division concerning loss of insurance
53 coverage, or change in qualifier.

54 (4) (a) If upon inspection or investigation, the division concludes that a person has
55 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
56 (10), (12), (14), (19), (21), or Subsection 58-55-504(2), or any rule or order issued with respect
57 to these subsections, and that disciplinary action is appropriate, the director or the director's

58 designee from within the division shall promptly issue a citation to the person according to this
59 chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person
60 to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b,
61 Administrative Procedures Act.

62 (i) ~~[Any]~~ A person who is in violation of the provisions of Subsection 58-55-308(2)
63 ~~[or]~~, Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or (21), or Subsection
64 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding
65 of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection
66 (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating
67 Subsection 58-55-308(2) ~~[or]~~, Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or
68 (21), or Subsection 58-55-504(2).

69 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
70 58-55-401 may not be assessed through a citation.

71 (iii) (A) A person who receives a citation or is fined for violating Subsection
72 58-55-501(21) may also be issued a cease and desist order from engaging in work to be
73 performed by a contractor licensed under this chapter unless the person meets the continuing
74 education requirement within 30 days after receipt of the citation or fine.

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

77 (C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.

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

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

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

86 the citation.

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

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

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

92 (iii) by mail.

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

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

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

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

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

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

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

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

107 and

108 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
109 \$2,000 for each day of continued offense.

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

112 (A) the division previously issued a final order determining that a person committed a
113 first or second offense in violation of Subsection 58-55-308(2) ~~or~~, Subsection 58-55-501(1),

114 (2), (3), (9), (10), (12), (14), or (19), or Subsection 58-55-504(2); or

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

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

118 (III) the division determines during an investigation that occurred after the initiation of
119 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
120 violation of the provisions of Subsection 58-55-308(2) [~~or~~], Subsection 58-55-501(1), (2), (3),
121 (9), (10), (12), (14), or (19), or Subsection 58-55-504(2); and

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

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

127 (5) (a) [~~Any~~] A penalty imposed by the director under Subsection (4)(h) shall be
128 deposited into the Commerce Service Fund. [~~Any~~]

129 (b) A penalty which is not paid may be collected by the director by either referring the
130 matter to a collection agency or bringing an action in the district court of the county in which
131 the person against whom the penalty is imposed resides or in the county where the office of the
132 director is located. [~~Any~~]

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

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

137 Section 2. Section **58-55-504 (Effective 07/01/07)** is amended to read:

138 **58-55-504 (Effective 07/01/07). Crane operators -- Required certification --**

139 **Penalty for violation.**

140 (1) As used in this section:

141 (a) "Commercial construction projects" means construction, alteration, repair,

142 demolition, or excavation projects that do not involve:

- 143 (i) single family detached housing;
- 144 (ii) multifamily attached housing up to and including a fourplex; or
- 145 (iii) commercial construction of not more than two stories above ground.

146 (b) (i) "Crane operator" means an individual engaged in operating a crane, which for
147 purposes of this section is a power-operated hoisting machine used in construction, demolition,
148 or excavation work that has a power-operated winch, load-line, and boom moving laterally by
149 the rotation of the machine on a carrier.

150 (ii) It does not include operating a fork lift, digger derrick truck, aircraft, bucket truck,
151 knuckle boom, side boom, mechanic's truck, or a vehicle or machine not using a
152 power-operated winch and load-line.

153 (2) (a) In order to operate a crane on commercial construction projects, an individual
154 shall be certified as a crane operator by the National Commission for the Certification of Crane
155 Operators or any other organization determined by the division to offer an equivalent testing
156 and certification program that meets the requirements of the American Society of Mechanical
157 Engineers ASME B 30.5 and the accreditation requirements of the National Commission for
158 Certifying Agencies.

159 (b) An individual who violates Subsection (2)(a) is guilty of a class A misdemeanor.

160 (3) [~~A person~~] An individual engaged in construction or operation incidental to
161 petroleum refining or electrical utility construction or maintenance is exempt from the crane
162 operator certification requirement of Subsection (2)(a).

163 [~~(4) An individual who violates Subsection (2) is guilty of a class A misdemeanor.~~]

164 Section 3. **Effective date.**

165 This bill takes effect on July 1, 2007.