

VERIFICATION OF LEGAL STATUS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Construction Trades Licensing Act to address verification of legal status under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to when a licensee verifies the legal status of an owner by complying with the federal process applicable to verifying the legal status of an employee to work in the United States; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-501, as last amended by Laws of Utah 2013, Chapter 57

58-55-502, as last amended by Laws of Utah 2011, Chapters 170 and 413

58-55-503, as last amended by Laws of Utah 2013, Chapter 57

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



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

29 **58-55-501. Unlawful conduct.**

30 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

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

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

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

59 electrician, or residential electrician, failing to directly supervise an apprentice under one's
60 supervision or exceeding the number of apprentices one is allowed to have under the speciality
61 contractor's supervision;

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

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

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

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

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

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

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

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

90 written contract the notification required in Section 38-11-108;

91 (20) wrongfully filing a preconstruction or construction lien in violation of Section
92 38-1a-308;

93 (21) if licensed as a contractor, not completing the approved continuing education
94 required under Section 58-55-302.5;

95 (22) an alarm company allowing an employee with a temporary license under Section
96 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
97 license, as provided in Subsection 58-55-312(3)(a)(ii);

98 (23) an alarm company agent under a temporary license under Section 58-55-312
99 engaging in conduct outside the scope of the temporary license, as provided in Subsection
100 58-55-312(3)(a)(ii);

101 (24) (a) an unincorporated entity licensed under this chapter having an individual who
102 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
103 lawfully present in the United States, unless the unincorporated entity has complied with 8
104 U.S.C. Sec. 1324a(b) with the individual who is not lawfully present in the United States; or

105 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
106 providing an individual who owns an interest in the unincorporated entity to engage in a
107 construction trade in Utah while not lawfully present in the United States, unless the
108 unincorporated entity has complied with 8 U.S.C. Sec. 1324a(b) with the individual who is not
109 lawfully present in the United States;

110 (25) an unincorporated entity failing to provide the following for an individual who
111 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
112 individual who engages, or will engage, in a construction trade in Utah for a separate entity for
113 which the unincorporated entity provides the individual as labor:

114 (a) workers' compensation coverage:

115 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and
116 Title 34A, Chapter 3, Utah Occupational Disease Act; or

117 (ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the
118 unincorporated entity were licensed under this chapter; and

119 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
120 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%

121 interest in the unincorporated entity, as defined by rule made by the division in accordance with
122 Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

123 (26) the failure of a sign installation contractor or nonelectrical outdoor advertising
124 sign contractor, as classified and defined in division rules, to:

125 (a) display the contractor's license number prominently on a vehicle that:

126 (i) the contractor uses; and

127 (ii) displays the contractor's business name; or

128 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
129 at a job site, whether or not the vehicle is owned by the contractor;

130 (27) (a) an unincorporated entity licensed under this chapter having an individual who
131 owns an interest in the unincorporated entity engage in a construction trade in the state while
132 the individual is using a Social Security number that does not belong to that individual, unless
133 the unincorporated entity has complied with 8 U.S.C. Sec. 1324a(b) with the individual who is
134 not lawfully present in the United States; or

135 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
136 providing an individual, who owns an interest in the unincorporated entity, to engage in a
137 construction trade in the state while the individual is using a Social Security number that does
138 not belong to that individual, unless the unincorporated entity has complied with 8 U.S.C. Sec.
139 1324a(b) with the individual who is not lawfully present in the United States; or

140 (28) a contractor failing to comply with a requirement imposed by a political
141 subdivision, state agency, or board of education under Section [58-55-310](#).

142 Section 2. Section **58-55-502** is amended to read:

143 **58-55-502. Unprofessional conduct.**

144 Unprofessional conduct includes:

145 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed
146 as a contractor under this chapter;

147 (2) disregarding or violating through gross negligence or a pattern of negligence:

148 (a) the building or construction laws of this state or any political subdivision;

149 (b) the safety and labor laws applicable to a project;

150 (c) any provision of the health laws applicable to a project;

151 (d) the workers' compensation insurance laws of this state applicable to a project;

152 (e) the laws governing withholdings for employee state and federal income taxes,
153 unemployment taxes, Social Security payroll taxes, or other required withholdings; or

154 (f) any reporting, notification, and filing laws of this state or the federal government;

155 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
156 licensee's direction which causes material injury to another;

157 (4) contract violations that pose a threat or potential threat to the public health, safety,
158 and welfare including:

159 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
160 specifications, or abandonment or failure to complete a project without the consent of the
161 owner or the owner's duly authorized representative or the consent of any other person entitled
162 to have the particular project completed in accordance with the plans, specifications, and
163 contract terms;

164 (b) failure to deposit funds to the benefit of an employee as required under any written
165 contractual obligation the licensee has to the employee;

166 (c) failure to maintain in full force and effect any health insurance benefit to an
167 employee that was extended as a part of any written contractual obligation or representation by
168 the licensee, unless the employee is given written notice of the licensee's intent to cancel or
169 reduce the insurance benefit at least 45 days before the effective date of the cancellation or
170 reduction;

171 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section
172 [38-11-207](#);

173 (e) failure to provide, when applicable, the information required by Section [38-11-108](#);
174 and

175 (f) willfully or deliberately misrepresenting or omitting a material fact in connection
176 with an application to claim recovery from the Residence Lien Recovery Fund under Section
177 [38-11-204](#);

178 (5) failing as an alarm company to notify the division of the cessation of performance
179 of its qualifying agent, or failing to replace its qualifying agent as required under Section
180 [58-55-304](#);

181 (6) failing as an alarm company agent to carry or display a copy of the licensee's
182 license as required under Section [58-55-311](#);

183 (7) failing to comply with operating standards established by rule in accordance with
184 Section 58-55-308;

185 (8) an unincorporated entity licensed under this chapter having an individual who owns
186 an interest in the unincorporated entity engage in a construction trade in Utah while not
187 lawfully present in the United States, unless the unincorporated entity has complied with 8
188 U.S.C. Sec. 1324a(b) with the individual who is not lawfully present in the United States;

189 (9) an unincorporated entity failing to provide the following for an individual who
190 engages, or will engage, in a construction trade in Utah for the unincorporated entity:

191 (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2,
192 Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

193 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
194 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
195 interest in the unincorporated entity, as defined by rule made by the division in accordance with
196 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

197 (10) the failure of an alarm company or alarm company agent to inform a potential
198 customer, before the customer's purchase of an alarm system or alarm service from the alarm
199 company, of the policy of the county, city, or town within which the customer resides relating
200 to priority levels for responding to an alarm signal transmitted by the alarm system that the
201 alarm company provides the customer.

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

203 **58-55-503. Penalty for unlawful conduct -- Citations.**

204 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
205 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), or (28), or
206 Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after
207 it is final, is guilty of a class A misdemeanor.

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

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

213 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an

214 infraction unless the violator did so with the intent to deprive the person to whom money is to
215 be paid of the money received, in which case the violator is guilty of theft, as classified in
216 Section 76-6-412.

217 (3) Grounds for immediate suspension of the licensee's license by the division and the
218 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
219 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
220 report to, or notify the division with respect to any matter for which application, notification, or
221 reporting is required under this chapter or rules adopted under this chapter, including applying
222 to the division for a new license to engage in a new specialty classification or to do business
223 under a new form of organization or business structure, filing with the division current
224 financial statements, notifying the division concerning loss of insurance coverage, or change in
225 qualifier.

226 (4) (a) If upon inspection or investigation, the division concludes that a person has
227 violated the provisions of Subsection 58-55-308(2) [~~or Subsections~~], Subsection 58-55-501(1),
228 (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection
229 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
230 action is appropriate, the director or the director's designee from within the division shall
231 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
232 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
233 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

234 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
235 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
236 (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated
237 settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine
238 pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and
239 desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10),
240 (12), (14), (19), (21), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2).

241 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
242 58-55-401 may not be assessed through a citation.

243 (b) (i) A citation shall be in writing and describe with particularity the nature of the
244 violation, including a reference to the provision of the chapter, rule, or order alleged to have

245 been violated.

246 (ii) A citation shall clearly state that the recipient must notify the division in writing
247 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
248 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

249 (iii) A citation shall clearly explain the consequences of failure to timely contest the
250 citation or to make payment of any fines assessed by the citation within the time specified in
251 the citation.

252 (c) A citation issued under this section, or a copy of a citation, may be served upon a
253 person upon whom a summons may be served:

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

255 (ii) personally or upon the person's agent by a division investigator or by a person
256 specially designated by the director; or

257 (iii) by mail.

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

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

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

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

266 (g) A citation may not be issued under this section after the expiration of six months
267 following the occurrence of a violation.

268 (h) The director or the director's designee shall assess a fine in accordance with the
269 following:

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

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

272 and

273 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
274 \$2,000 for each day of continued offense.

275 (i) (i) For purposes of issuing a final order under this section and assessing a fine under

276 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

277 (A) the division previously issued a final order determining that a person committed a
278 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
279 (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2); or

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

281 (II) a final order has not been issued by the division in the action initiated under
282 Subsection (4)(i)(i)(B)(I);

283 (III) the division determines during an investigation that occurred after the initiation of
284 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
285 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
286 (10), (12), (14), (19), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2); and

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

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

292 (j) In addition to any other licensure sanction or fine imposed under this section, the
293 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
294 two or more times within a 12-month period~~[-, unless, with respect to a violation of Subsection~~
295 ~~58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal~~
296 ~~legal working status of the individual who was the subject of the violation using a status~~
297 ~~verification system, as defined in Section 13-47-102].~~

298 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
299 for each individual is considered a separate violation.

300 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
301 into the Commerce Service Account created by Section 13-1-2.

302 (b) A penalty that is not paid may be collected by the director by either referring the
303 matter to a collection agency or bringing an action in the district court of the county in which
304 the person against whom the penalty is imposed resides or in the county where the office of the
305 director is located.

306 (c) A county attorney or the attorney general of the state is to provide legal assistance

307 and advice to the director in any action to collect the penalty.

308 (d) In an action brought to enforce the provisions of this section, reasonable attorney

309 fees and costs shall be awarded.

Legislative Review Note
as of 2-13-14 4:24 PM

Office of Legislative Research and General Counsel