

BUSINESS PAYROLL PRACTICES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill amends provisions of the Utah Construction Trades Licensing Act regarding unlawful conduct.

Highlighted Provisions:

This bill:

▶ amends provisions of the Utah Construction Trades Licensing Act regarding unlawful conduct.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-503, as last amended by Laws of Utah 2018, Chapter 318

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

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

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

(1) (a) (i) A person who violates Subsection **58-55-308**(2), Subsection **58-55-501**(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (16)(e), ~~§ (17)~~ (22), (23), (24), (25), (26),

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28 (27), (28), or (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued
29 under this section after it is final, is guilty of a class A misdemeanor.

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

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

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

39 (3) Grounds for immediate suspension of a licensee's license by the division and the
40 commission include:

41 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section
42 58-55-501, or Subsection 58-55-504(2); and

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

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

48 (ii) filing a current financial statement with the division; and

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

50 (4) (a) (i) If upon inspection or investigation, the division concludes that a person has
51 violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
52 (10), (12), (14), (16)(e), ~~§ (17),~~ (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29),
53 Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that
54 disciplinary action is appropriate, the director or the director's designee from within the
55 division shall promptly issue a citation to the person according to this chapter and any pertinent
56 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
57 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

58 [(i)] (ii) A person who is in violation of the provisions of Subsection 58-55-308(2),

59 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), ~~§~~→ ~~[(17)]~~ ←~~§~~ (19), (21), (22), (23),
 59a (24),
 60 (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested
 61 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
 62 be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be
 63 ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1),
 64 (2), (3), (9), (10), (12), (14), (16)(e), ~~§~~→ ~~[(17)]~~ ←~~§~~ (19), (21), (24), (25), (26), (27), (28), or (29),
 64a or
 65 Subsection 58-55-504(2).

66 ~~[(it)]~~ (iii) Except for a cease and desist order, the licensure sanctions cited in Section
 67 58-55-401 may not be assessed through a citation.

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

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

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

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

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

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

82 (iii) by mail.

83 (d) (i) If within 20 calendar days after the day on which a citation is served, the person
 84 to whom the citation was issued fails to request a hearing to contest the citation, the citation
 85 becomes the final order of the division and is not subject to further agency review.

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

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

89 (f) The failure of an applicant for licensure to comply with a citation after ~~[(it)]~~ the

90 citation becomes final is a ground for denial of license.

91 (g) A citation may not be issued under this section after the expiration of six months
92 [~~following the occurrence of a violation~~] after the day on which the violation occurs.

93 (h) (i) Except as provided in [~~Subsection~~] Subsections (4)(h)(ii) and (5), the director or
94 the director's designee shall assess a fine in accordance with the following:

95 [(i)] (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to
96 \$1,000;

97 [(ii)] (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to
98 \$2,000; and

99 [(iii)] (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of
100 up to \$2,000 for each day of continued offense.

101 (ii) Except as provided in Subsection (5), if a person violates Subsection
102 58-55-501(16)(e) ~~§~~ → [~~(17)~~] ← ~~§~~ or (29), the director or the director's designee shall assess a fine
102a in

103 accordance with the following:

104 (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

105 (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000;

106 and

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

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

111 (A) the division previously issued a final order determining that a person committed a
112 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
113 (3), (9), (10), (12), (14), (16)(e), ~~§~~ → [~~(17)~~] ← ~~§~~ (19), (24), (25), (26), (27), (28), or (29), or
113a Subsection

114 58-55-504(2); or

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

116 (II) a final order has not 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), Subsection 58-55-501(1), (2), (3), (9),

121 (10), (12), (14), (16)(e), ~~§~~ → ~~[(17)]~~ ← ~~§~~ (19), (24), (25), (26), (27), (28), or (29), or Subsection
122 58-55-504(2); and

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

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

128 (j) In addition to any other licensure sanction or fine imposed under this section, the
129 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
130 two or more times within a 12-month period, unless, with respect to a violation of Subsection
131 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
132 legal working status of the individual who was the subject of the violation using a status
133 verification system, as defined in Section 13-47-102.

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

136 (5) If a person violates Section 58-55-501, the division may not treat the violation as a
137 subsequent violation of a previous violation if the violation occurs five years or more after the
138 day on which the person committed the previous violation.

139 (6) If, after an investigation, the division determines that a person has committed
140 multiple of the same type of violation of Section 58-55-501, the division may treat each
141 violation as a separate violation of Section 58-55-501 and apply a penalty under this section to
142 each violation.

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

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

149 (c) A county attorney or the attorney general of the state shall provide legal assistance
150 and advice to the director in an action to collect a penalty.

151 (d) In an action brought to collect a penalty, the court shall award reasonable attorney

152 fees and costs to the prevailing party.