

LICENSING RELATED REVISIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Construction Trades Licensing Act and general government provisions to address various issues related to licensing by the Department of Commerce.

Highlighted Provisions:

This bill:

- ▶ modifies what constitutes unlawful and unprofessional conduct under the Utah Construction Trades Licensing Act;
- ▶ makes permissive the Division of Occupational and Professional Licensing revoking a license under certain circumstances;
- ▶ makes permissive the Department of Commerce verifying status of an owner of an unincorporated entity; and
- ▶ makes technical and conforming amendments.

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 2011, Chapters 195 and 413



28 **58-55-502**, as last amended by Laws of Utah 2011, Chapters 170 and 413
29 **63G-12-402**, as last amended by Laws of Utah 2011, Chapter 413 and renumbered and
30 amended by Laws of Utah 2011, Chapter 18



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

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

34 **58-55-501. Unlawful conduct.**

35 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

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

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

62 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
63 journeyman plumber, residential journeyman plumber, journeyman electrician, master
64 electrician, or residential electrician, failing to directly supervise an apprentice under one's
65 supervision or exceeding the number of apprentices one is allowed to have under the speciality
66 contractor's supervision;

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

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

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

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

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

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

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

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

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

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

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

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

94 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
95 written contract the notification required in Section 38-11-108;

96 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25;

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

99 (22) an alarm company allowing an employee with a temporary license under Section
100 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
101 license, as provided in Subsection 58-55-312(3)(a)(ii);

102 (23) an alarm company agent under a temporary license under Section 58-55-312
103 engaging in conduct outside the scope of the temporary license, as provided in Subsection
104 58-55-312(3)(a)(ii);

105 (24) (a) an unincorporated entity licensed under this chapter [~~having~~] willfully or
106 deliberately allowing an individual who owns an interest in the unincorporated entity engage in
107 a construction trade in Utah while not lawfully present in the United States; or

108 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
109 willfully or deliberately providing an individual who owns an interest in the unincorporated
110 entity to engage in a construction trade in Utah while not lawfully present in the United States;

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

115 (a) workers' compensation coverage:

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

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

120 (b) unemployment compensation in accordance with Title 35A, Chapter 4,

121 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
122 interest in the unincorporated entity, as defined by rule made by the division in accordance with
123 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

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

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

127 (i) the contractor uses; and

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

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

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

132 **58-55-502. Unprofessional conduct.**

133 Unprofessional conduct includes:

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

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

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

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

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

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

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

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

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

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

148 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
149 specifications, or abandonment or failure to complete a project without the consent of the
150 owner or the owner's duly authorized representative or the consent of any other person entitled
151 to have the particular project completed in accordance with the plans, specifications, and

152 contract terms;

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

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

160 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section
161 38-11-207;

162 (e) failure to provide, when applicable, the information required by Section 38-11-108;
163 and

164 (f) willfully or deliberately misrepresenting or omitting a material fact in connection
165 with an application to claim recovery from the Residence Lien Recovery Fund under Section
166 38-11-204;

167 (5) failing as an alarm company to notify the division of the cessation of performance
168 of its qualifying agent, or failing to replace its qualifying agent as required under Section
169 58-55-304;

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

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

174 (8) an unincorporated entity licensed under this chapter having an individual who owns
175 an interest in the unincorporated entity engage in a construction trade in Utah while not
176 lawfully present in the United States;

177 (9) an unincorporated entity failing to provide through gross negligence or a pattern of
178 negligence the following for an individual who engages, or will engage, in a construction trade
179 in Utah for the unincorporated entity:

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

182 (b) unemployment compensation in accordance with Title 35A, Chapter 4,

183 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
184 interest in the unincorporated entity, as defined by rule made by the division in accordance with
185 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

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

191 Section 3. Section **63G-12-402** is amended to read:

192 **63G-12-402. Receipt of state, local, or federal public benefits -- Verification --**
193 **Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

194 (1) (a) Except as provided in Subsection (3) or when exempted by federal law, an
195 agency or political subdivision of the state shall verify the lawful presence in the United States
196 of an individual at least 18 years of age who applies for:

197 (i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

198 (ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an
199 agency or political subdivision of this state.

200 (b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction
201 Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of
202 Commerce [~~shall~~] may verify in accordance with this Subsection [~~(2)~~] (1) the lawful presence
203 in the United States of each individual who:

204 (i) owns an interest in the contractor that is an unincorporated entity; and

205 (ii) engages, or will engage, in a construction trade in Utah as an owner of the
206 contractor described in Subsection [~~(2)~~] (1)(b)(i).

207 (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or
208 national origin.

209 (3) Verification of lawful presence under this section is not required for:

210 (a) any purpose for which lawful presence in the United States is not restricted by law,
211 ordinance, or regulation;

212 (b) assistance for health care items and services that:

213 (i) are necessary for the treatment of an emergency medical condition, as defined in 42

214 U.S.C. Sec. 1396b(v)(3), of the individual involved; and
215 (ii) are not related to an organ transplant procedure;
216 (c) short-term, noncash, in-kind emergency disaster relief;
217 (d) public health assistance for immunizations with respect to immunizable diseases
218 and for testing and treatment of symptoms of communicable diseases whether or not the
219 symptoms are caused by the communicable disease;
220 (e) programs, services, or assistance such as soup kitchens, crisis counseling and
221 intervention, and short-term shelter, specified by the United States Attorney General, in the
222 sole and unreviewable discretion of the United States Attorney General after consultation with
223 appropriate federal agencies and departments, that:
224 (i) deliver in-kind services at the community level, including through public or private
225 nonprofit agencies;
226 (ii) do not condition the provision of assistance, the amount of assistance provided, or
227 the cost of assistance provided on the income or resources of the individual recipient; and
228 (iii) are necessary for the protection of life or safety;
229 (f) the exemption for paying the nonresident portion of total tuition as set forth in
230 Section 53B-8-106;
231 (g) an applicant for a license under Section 61-1-4, if the applicant:
232 (i) is registered with the Financial Industry Regulatory Authority; and
233 (ii) files an application with the state Division of Securities through the Central
234 Registration Depository;
235 (h) a state public benefit to be given to an individual under Title 49, Utah State
236 Retirement and Insurance Benefit Act;
237 (i) a home loan that will be insured, guaranteed, or purchased by:
238 (i) the Federal Housing Administration, the Veterans Administration, or any other
239 federal agency; or
240 (ii) an enterprise as defined in 12 U.S.C. Sec. 4502;
241 (j) a subordinate loan or a grant that will be made to an applicant in connection with a
242 home loan that does not require verification under Subsection (3)(i); and
243 (k) an applicant for a license issued by the Department of Commerce or individual
244 described in Subsection [~~(2)~~] (1)(b), if the applicant or individual provides the Department of

245 Commerce:

246 (i) certification, under penalty of perjury, that the applicant or individual is:

247 (A) a United States citizen;

248 (B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

249 (C) lawfully present in the United States; and

250 (ii) the number for a driver license or identification card issued:

251 (A) under Title 53, Chapter 3, Uniform Driver License Act; or

252 (B) by a state other than Utah that as part of issuing the driver license or identification
253 card verifies an individual's lawful presence in the United States.

254 (4) (a) An agency or political subdivision required to verify the lawful presence in the
255 United States of an applicant under this section shall require the applicant to certify under
256 penalty of perjury that:

257 (i) the applicant is a United States citizen; or

258 (ii) the applicant is:

259 (A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

260 (B) lawfully present in the United States.

261 (b) The certificate required under this Subsection (4) shall include a statement advising
262 the signer that providing false information subjects the signer to penalties for perjury.

263 (5) An agency or political subdivision shall verify a certification required under
264 Subsection (4)(b) through the federal SAVE program.

265 (6) (a) An individual who knowingly and willfully makes a false, fictitious, or
266 fraudulent statement or representation in a certification under Subsection (3)(k) or (4) is subject
267 to the criminal penalties applicable in this state for:

268 (i) making a written false statement under Subsection 76-8-504(2); and

269 (ii) fraudulently obtaining:

270 (A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

271 (B) unemployment compensation under Section 76-8-1301.

272 (b) If the certification constitutes a false claim of United States citizenship under 18
273 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United
274 States Attorney General for the applicable district based upon the venue in which the
275 application was made.

276 (c) If an agency or political subdivision receives verification that a person making an
277 application for a benefit, service, or license is not a qualified alien, the agency or political
278 subdivision shall provide the information to the Office of the Attorney General unless
279 prohibited by federal mandate.

280 (7) An agency or political subdivision may adopt variations to the requirements of this
281 section that:

282 (a) clearly improve the efficiency of or reduce delay in the verification process; or

283 (b) provide for adjudication of unique individual circumstances where the verification
284 procedures in this section would impose an unusual hardship on a legal resident of Utah.

285 (8) It is unlawful for an agency or a political subdivision of this state to provide a state,
286 local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.

287 (9) A state agency or department that administers a program of state or local public
288 benefits shall:

289 (a) provide an annual report to the governor, the president of the Senate, and the
290 speaker of the House regarding its compliance with this section; and

291 (b) (i) monitor the federal SAVE program for application verification errors and
292 significant delays;

293 (ii) provide an annual report on the errors and delays to ensure that the application of
294 the federal SAVE program is not erroneously denying a state or local benefit to a legal resident
295 of the state; and

296 (iii) report delays and errors in the federal SAVE program to the United States
297 Department of Homeland Security.

Legislative Review Note
as of **2-16-12 11:23 AM**

Office of Legislative Research and General Counsel