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| Utah Construction Trades Continuing Education Amendments | | | | |

H.B. 73

1

UTAH CONSTRUCTION TRADES CONTINUING

2

EDUCATION AMENDMENTS

3

2010 GENERAL SESSION

4

STATE OF UTAH

5

Chief Sponsor: Michael T. Morley

6

Senate Sponsor: _____

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8 **LONG TITLE**9 **General Description:**10 This bill modifies provisions of the Utah Construction Trades Licensing Act related to
11 continuing education.12 **Highlighted Provisions:**

13 This bill:

14 . defines "approved continuing education;"

15 . requires a contractor licensee to complete six hours of approved continuing
16 education during a two-year licensing cycle;17 . requires the commission, with the concurrence of the division, to establish a
18 program of approved continuing education for contractor licensees;19 . authorizes the Division of Occupational and Professional Licensing to charge a
20 reasonable fee to administer the continuing education program; and21 . modifies a provision relating to what constitutes unlawful conduct under the Utah
22 Construction Trades Licensing Act.23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28

AMENDS:

29 **58-55-102**, as last amended by Laws of Utah 2008, Chapter 21530 **58-55-303**, as last amended by Laws of Utah 2001, Chapter 198

31 **58-55-501**, as last amended by Laws of Utah 2008, Chapter 377

32 ENACTS:

33 **58-55-302.5**, Utah Code Annotated 1953

34

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

36 Section 1. Section **58-55-102** is amended to read:

37 **58-55-102. Definitions.**

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

39 (1) (a) "Alarm business or company" means a person engaged in the sale, installation,
40 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system,
41 except as provided in Subsection (1)(b).

42 (b) "Alarm business or company" does not include:

43 (i) a person engaged in the manufacture and sale of alarm systems when that person is
44 not engaged in the installation, maintenance, alteration, repair, replacement, servicing, or
45 monitoring of alarm systems, and the manufacture or sale occurs only at a place of business
46 established by the person engaged in the manufacture or sale and does not involve site

visits at

47 the place or intended place of installation of an alarm system; or

48 (ii) an owner of an alarm system, or an employee of the owner of an alarm system who
49 is engaged in installation, maintenance, alteration, repair, replacement, servicing, or

monitoring

50 of the alarm system owned by that owner.

51 (2) "Alarm company agent" means any individual employed within this state by a
52 person engaged in the alarm business.

53 (3) "Alarm system" means equipment and devices assembled for the purpose of:

54 (a) detecting and signaling unauthorized intrusion or entry into or onto certain
55 premises; or

56 (b) signaling a robbery or attempted robbery on protected premises.

57 (4) "Apprentice electrician" means a person licensed under this chapter as an
58 apprentice electrician who is learning the electrical trade under approved supervision of a

59

master electrician, residential master electrician, a journeyman electrician, or a residential

60 journeyman electrician.

61 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice
62 plumber who is learning the plumbing trade under approved supervision of a master

plumber,

63 residential master plumber, journeyman plumber, or a residential journeyman plumber.

64 *(6) "Approved continuing education" means instruction provided through courses*
65 *under a program established under Subsection 58-55-302.5 (2).*

66 ~~(6)~~ (7) "Approved supervision" means the immediate supervision of apprentices by
67 qualified licensed electricians or plumbers as a part of a planned program of training.

68 ~~(7)~~ (8) "Board" means the Electrician Licensing Board, Alarm System Security and
69 Licensing Board, or Plumbers Licensing Board created in Section 58-55-201 .

70 ~~(8)~~ (9) "Combustion system" means an assembly consisting of:

71 (a) piping and components with a means for conveying, either continuously or
72 intermittently, natural gas from the outlet of the natural gas provider's meter to the burner

of the

73 appliance;

74 (b) the electric control and combustion air supply and venting systems, including air

75 ducts; and
 76 (c) components intended to achieve control of quantity, flow, and pressure.
 77 [~~9~~] (10) "Commission" means the Construction Services Commission created under
 78 Section 58-55-103 .
 79 [~~10~~] (11) "Construction trade" means any trade or occupation involving:
 80 (a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition
 81 to, or improvement of any building, highway, road, railroad, dam, bridge, structure,
 excavation
 82 or other project, development, or improvement to other than personal property; and
 83 (ii) constructing, remodeling, or repairing a manufactured home or mobile home as
 84 defined in Section 58-56-3 ; or
 85 (b) installation or repair of a residential or commercial natural gas appliance or
 86 combustion system.
 87 [~~11~~] (12) "Construction trades instructor" means a person licensed under this chapter
 88 to teach one or more construction trades in both a classroom and project environment,
 where a
 89 project is intended for sale to or use by the public and is completed under the direction of
 the

90
 instructor, who has no economic interest in the project.
 91 [~~12~~] (13) (a) "Contractor" means any person who for compensation other than wages
 92 as an employee undertakes any work in the construction, plumbing, or electrical trade for
 93 which licensure is required under this chapter and includes:
 94 (i) a person who builds any structure on his own property for the purpose of sale or
 95 who builds any structure intended for public use on his own property;
 96 (ii) any person who represents himself to be a contractor by advertising or any other
 97 means;
 98 (iii) any person engaged as a maintenance person, other than an employee, who
 99 regularly engages in activities set forth under the definition of "construction trade";
 100 (iv) any person engaged in any construction trade for which licensure is required under
 101 this chapter; or
 102 (v) a construction manager who performs management and counseling services on a
 103 construction project for a fee.
 104 (b) "Contractor" does not include an alarm company or alarm company agent.
 105 [~~13~~] (14) (a) "Electrical trade" means the performance of any electrical work involved
 106 in the installation, construction, alteration, change, repair, removal, or maintenance of
 facilities,
 107 buildings, or appendages or appurtenances.
 108 (b) "Electrical trade" does not include:
 109 (i) transporting or handling electrical materials;
 110 (ii) preparing clearance for raceways for wiring; or
 111 (iii) work commonly done by unskilled labor on any installations under the exclusive
 112 control of electrical utilities.
 113 (c) For purposes of Subsection [~~13~~] (14)(b):
 114 (i) no more than one unlicensed person may be so employed unless more than five
 115 licensed electricians are employed by the shop; and
 116 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio
 117 permitted by this Subsection [~~13~~] (14)(c).
 118 [~~14~~] (15) "Employee" means an individual as defined by the division by rule giving

119 consideration to the definition adopted by the Internal Revenue Service and the
 Department of
 120 Workforce Services.

121
 [~~(15)~~] (16) "Engage in a construction trade" means to:
 122 (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged
 123 in a construction trade; or
 124 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person
 125 to believe one is or will act as a contractor.
 126 [~~(16)~~] (17) (a) "Financial responsibility" means a demonstration of a current and
 127 expected future condition of financial solvency evidencing a reasonable expectation to the
 128 division and the board that an applicant or licensee can successfully engage in business as
 a
 129 contractor without jeopardy to the public health, safety, and welfare.
 130 (b) Financial responsibility may be determined by an evaluation of the total history
 131 concerning the licensee or applicant including past, present, and expected condition and
 record
 132 of financial solvency and business conduct.
 133 [~~(17)~~] (18) "Gas appliance" means any device that uses natural gas to produce light,
 134 heat, power, steam, hot water, refrigeration, or air conditioning.
 135 [~~(18)~~] (19) (a) "General building contractor" means a person licensed under this
 136 chapter as a general building contractor qualified by education, training, experience, and
 137 knowledge to perform or superintend construction of structures for the support, shelter,
 and
 138 enclosure of persons, animals, chattels, or movable property of any kind or any of the
 139 components of that construction except plumbing, electrical work, mechanical work, and
 140 manufactured housing installation, for which the general building contractor shall employ
 the
 141 services of a contractor licensed in the particular specialty, except that a general building
 142 contractor engaged in the construction of single-family and multifamily residences up to
 four
 143 units may perform the mechanical work and hire a licensed plumber or electrician as an
 144 employee.
 145 (b) The division may by rule exclude general building contractors from engaging in the
 146 performance of other construction specialties in which there is represented a substantial
 risk to
 147 the public health, safety, and welfare, and for which a license is required unless that
 general
 148 building contractor holds a valid license in that specialty classification.
 149 [~~(19)~~] (20) (a) "General engineering contractor" means a person licensed under this
 150 chapter as a general engineering contractor qualified by education, training, experience,
 and
 151 knowledge to perform construction of fixed works in any of the following: irrigation,
 drainage,

152
 water, power, water supply, flood control, inland waterways, harbors, railroads, highways,
 153 tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and
 industrial

154 plants requiring specialized engineering knowledge and skill, piers, and foundations, or
any of
155 the components of those works.
156 (b) A general engineering contractor may not perform construction of structures built
157 primarily for the support, shelter, and enclosure of persons, animals, and chattels.
158 [~~(20)~~] (21) "Immediate supervision" means reasonable direction, oversight, inspection,
159 and evaluation of the work of a person, in or out of the immediate presence of the
supervising
160 person, so as to ensure that the end result complies with applicable standards.
161 [~~(21)~~] (22) "Individual" means a natural person.
162 [~~(22)~~] (23) "Journeyman electrician" means a person licensed under this chapter as a
163 journeyman electrician having the qualifications, training, experience, and knowledge to
wire,
164 install, and repair electrical apparatus and equipment for light, heat, power, and other
purposes.
165 [~~(23)~~] (24) "Journeyman plumber" means a person licensed under this chapter as a
166 journeyman plumber having the qualifications, training, experience, and technical
knowledge
167 to engage in the plumbing trade.
168 [~~(24)~~] (25) "Master electrician" means a person licensed under this chapter as a master
169 electrician having the qualifications, training, experience, and knowledge to properly
plan,
170 layout, and supervise the wiring, installation, and repair of electrical apparatus and
equipment
171 for light, heat, power, and other purposes.
172 [~~(25)~~] (26) "Master plumber" means a person licensed under this chapter as a master
173 plumber having the qualifications, training, experience, and knowledge to properly plan
and
174 layout projects and supervise persons in the plumbing trade.
175 [~~(26)~~] (27) "Person" means a natural person, sole proprietorship, joint venture,
176 corporation, limited liability company, association, or organization of any type.
177 [~~(27)~~] (28) (a) "Plumbing trade" means the performance of any mechanical work
178 pertaining to the installation, alteration, change, repair, removal, maintenance, or use in
179 buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and
180 fittings for:
181 (i) delivery of the water supply;
182 (ii) discharge of liquid and water carried waste; or

183
184 (iii) the building drainage system within the walls of the building.
185 (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes,
drains
186 fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof
outside
187 together with their devices, appurtenances, and connections where installed within the
188 walls of the building.
189 [~~(28)~~] (29) (a) "Ratio of apprentices" means, for the purpose of determining
apprentice
190 compliance with the requirements for planned programs of training and electrician
licensing applications, the shop ratio of apprentice electricians to journeyman or master

191 electricians shall be one journeyman or master electrician to one apprentice on industrial
 and
 192 commercial work, and one journeyman or master electrician to three apprentices on
 residential
 193 work.
 194 (b) On-the-job training shall be under circumstances in which the ratio of apprentices
 195 to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up
 to
 196 three apprentices to one supervisor on residential projects.
 197 [~~(29)~~] (30) "Residential and small commercial contractor" means a person licensed
 198 under this chapter as a residential and small commercial contractor qualified by
 education,
 199 training, experience, and knowledge to perform or superintend the construction of
 200 single-family residences, multifamily residences up to four units, and commercial
 construction
 201 of not more than three stories above ground and not more than 20,000 square feet, or any
 of the
 202 components of that construction except plumbing, electrical work, mechanical work, and
 203 manufactured housing installation, for which the residential and small commercial
 contractor
 204 shall employ the services of a contractor licensed in the particular specialty, except that a
 205 residential and small commercial contractor engaged in the construction of single-family
 and
 206 multifamily residences up to four units may perform the mechanical work and hire a
 licensed
 207 plumber or electrician as an employee.
 208 [~~(30)~~] (31) "Residential building," as it relates to the license classification of residential
 209 journeyman plumber and residential master plumber, means a single or multiple family
 210 dwelling of up to four units.
 211 [~~(31)~~] (32) "Residential journeyman electrician" means a person licensed under this
 212 chapter as a residential journeyman electrician having the qualifications, training,
 experience,
 213 and knowledge to wire, install, and repair electrical apparatus and equipment for light,
 heat,

214 power, and other purposes on buildings using primarily nonmetallic sheath cable.
 215 [~~(32)~~] (33) "Residential journeyman plumber" means a person licensed under this
 216 chapter as a residential journeyman plumber having the qualifications, training,
 experience, and
 217 knowledge to engage in the plumbing trade as limited to the plumbing of residential
 buildings.
 218 [~~(33)~~] (34) "Residential master electrician" means a person licensed under this chapter
 219 as a residential master electrician having the qualifications, training, experience, and
 220 knowledge to properly plan, layout, and supervise the wiring, installation, and repair of
 221 electrical apparatus and equipment for light, heat, power, and other purposes on
 residential
 222 projects.
 223 [~~(34)~~] (35) "Residential master plumber" means a person licensed under this chapter as
 224 a residential master plumber having the qualifications, training, experience, and

knowledge to
 225 properly plan and layout projects and supervise persons in the plumbing trade as limited
 to the
 226 plumbing of residential buildings.
 227 [~~(35)~~] (36) "Residential project," as it relates to an electrician or electrical contractor,
 228 means buildings primarily wired with nonmetallic sheathed cable, in accordance with
 standard
 229 rules and regulations governing this work, including the National Electrical Code, and in
 which
 230 the voltage does not exceed 250 volts line to line and 125 volts to ground.
 231 [~~(36)~~] (37) (a) "Specialty contractor" means a person licensed under this chapter under
 232 a specialty contractor classification established by rule, who is qualified by education,
 training,
 233 experience, and knowledge to perform those construction trades and crafts requiring
 234 specialized skill, the regulation of which are determined by the division to be in the best
 235 interest of the public health, safety, and welfare.
 236 (b) A specialty contractor may perform work in crafts or trades other than those in
 237 which he is licensed if they are incidental to the performance of his licensed craft or trade.
 238 [~~(37)~~] (38) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501 .
 239 [~~(38)~~] (39) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502
 240 and as may be further defined by rule.
 241 [~~(39)~~] (40) "Wages" means amounts due to an employee for labor or services whether
 242 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for
 243 calculating the amount.
 244 Section 2. Section **58-55-302.5** is enacted to read:

245
 246 **58-55-302.5. Continuing education requirements of contractor licensees --**
 247 **Continuing education courses.**
 248 *(1) Each contractor licensee under a license issued under this chapter shall complete*
six hours of approved continuing education during each two-year renewal cycle
 established by
 249 *rule under Subsection 58-55-303 (1).*
 250 *(2) The commission shall, with the concurrence of the division, establish by rule a*
 251 *program of approved continuing education for contractor licensees.*
 252 *(3) The division may contract with a person to establish and maintain a continuing*
 253 *education registry to include:*
 254 *(a) an online application for a continuing education course provider to apply to the*
 255 *division for approval of the course for inclusion in the program of approved continuing*
 256 *education;*
 257 *(b) a list of courses that the division has approved for inclusion in the program of*
 258 *approved continuing education; and*
 259 *(c) a list of courses that:*
 260 *(i) a contractor licensee has completed under the program of approved continuing*
 261 *education; and*
 262 *(ii) the licensee may access to monitor the licensee's compliance with the continuing*
 263 *education requirement established under Subsection (1).*
 264 *(4) The division may charge a reasonable fee to administer the requirements of this*
 265 *section.*
 266 Section 3. Section **58-55-303** is amended to read:

267 **58-55-303. Term of license -- Expiration -- Renewal.**

268 (1) Each license issued under this chapter shall be issued in accordance with a two-year
 269 renewal cycle established by rule. The division may by rule extend or shorten a renewal
 period
 270 by as much as one year to stagger the renewal cycle it administers.
 271 (2) At the time of renewal, the *contractor* licensee shall show satisfactory evidence of:
 272 *(a) continuing financial responsibility as required under Section 58-55-306 [-]; and*
 273 *(b) completion of six hours of approved continuing education, as required in Section*
 274 *58-55-302.5.*
 275 (3) Each license automatically expires on the expiration date shown on the license

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unless the licensee renews the license in accordance with Section 58-1-308 .

277 (4) The requirements of Subsection 58-55-302 (9) shall also apply to applicants seeking
 278 to renew or reinstate a license.

279 (5) In addition to any other requirements imposed by law, if a license has been
 280 suspended or revoked for any reason, the applicant must pay in full all fines imposed by

the

281 division, resolve any outstanding citations or disciplinary actions with the division, satisfy

any

282 Section 58-55-503 judgment and sentence or nontrial resolution, complete a new financial
 283 responsibility review as required under Section 58-55-306 , using only titled assets, and

pay in

284 full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien

Restriction

285 and Lien Recovery Fund Act.

286 Section 4. Section **58-55-501** is amended to read:

287 **58-55-501. Unlawful conduct.**

288 Unlawful conduct includes:

289 (1) engaging in a construction trade, acting as a contractor, an alarm business or
 290 company, or an alarm company agent, or representing oneself to be engaged in a

construction

291 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
 292 person doing any of these is appropriately licensed or exempted from licensure under this
 293 chapter;

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

296 (3) hiring or employing in any manner an unlicensed person, other than an employee
 297 for wages who is not required to be licensed under this chapter, to engage in a

construction

298 trade for which licensure is required or to act as a contractor or subcontractor in a

construction

299 trade requiring licensure;

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

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

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

307

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

308 (8) submitting a bid for any work for which a license is required under this chapter by a

309 person not licensed or exempted from licensure as a contractor under this chapter;

310 (9) willfully or deliberately misrepresenting or omitting a material fact in connection

311 with an application to obtain or renew a license under this chapter;

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

313 (11) doing business under a name other than the name appearing on the license, except

314 as permitted by statute or rule;

315 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,

316 journeyman plumber, residential journeyman plumber, journeyman electrician, master

317 electrician, or residential electrician, failing to directly supervise an apprentice under

one's

318 supervision or exceeding the number of apprentices one is allowed to have under his

319 supervision;

320 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any

321 funds in payment for a specific project from an owner or any other person, which funds

are to

322 pay for work performed or materials and services furnished for that specific project, and

after

323 receiving the funds to exercise unauthorized control over the funds by failing to pay the

full

324 amounts due and payable to persons who performed work or furnished materials or

services

325 within a reasonable period of time;

326 (14) employing an unlicensed alarm business or company or an unlicensed individual

327 as an alarm company agent, except as permitted under the exemption from licensure

provisions

328 under Section 58-1-307 ;

329 (15) if licensed as an alarm company or alarm company agent, filing with the division

330 fingerprint cards for an applicant which are not those of the applicant, or are in any other

way

331 false or fraudulent and intended to mislead the division in its consideration of the

applicant for

332 licensure;

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

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

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

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

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

338

(e) the laws governing withholdings for employee state and federal income taxes,

339 unemployment taxes, FICA, or other required withholdings; or

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

341 (17) aiding or abetting any person in evading the provisions of this chapter or rules

342 established under the authority of the division to govern this chapter;

343 (18) engaging in the construction trade or as a contractor for the construction of

344 residences of up to two units when not currently registered or exempt from registration as

a

345 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien
 Recovery
 346 Fund Act;
 347 (19) failing, as an original contractor, as defined in Section 38-11-102 , to include in a
 348 written contract the notification required in Section 38-11-108 ;
 349 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25 ; or
 350 (21) if licensed as a contractor, not completing [~~a three-hour core education class and~~
 351 ~~an additional three hours of professional education approved by the division and the~~
 352 ~~Construction Services Commission within each two-year renewal cycle, beginning with~~
 the
 353 ~~two-year renewal cycle that starts July 1, 2005, and ends June 30, 2007 unless an~~
 exemption
 354 ~~has been granted to the licensee by the Construction Services Commission, with the~~
 355 ~~concurrence of the division, except that this Subsection (21) is repealed effective July 1,~~
 2010
 356 ~~and its implementation is subject to the division receiving adequate funding for its~~
 357 ~~implementation through a legislative appropriation] *the approved continuing education*
 358 *required under Section 58-55-302.5 .*~~

Legislative Review Note
as of 12-16-09 9:41 AM

Office of Legislative Research and General Counsel