

House Bill 255 FAQ

- **What does HB 255 do?**

HB 255 changes the penalties for performing plumbing or electrical work without a license (certificate of fitness). The bill replaces the current criminal penalty with non-criminal graduated penalties that will enable more effective enforcement against willful and repeat violators.

Currently, engaging in one of these trades without a valid certificate of fitness is a misdemeanor with up to a \$500 fine. The misdemeanor applies to employers, employees, and independent contractors alike. This bill would eliminate the misdemeanor and replace it with an administrative fine and a violation. This bill also lowers the relative penalties for employees compared to those for employers and independent contractors.

First-time offenses would result in an administrative fine of \$125 (\$250 for an employer). Second and subsequent offenses would result in an administrative fine of \$250 (\$500 for an employer).

Those who repeatedly and willfully work without a certificate of fitness would be subject to a violation with a penalty of up to \$500. Only employers and independent contractors would be subject to a violation – not employees. HB 255 establishes a citation procedure that describes how the department will issue those violations.

- **Why do we need to change the current penalties?**

Under current law, performing electrical or plumbing work without a certificate of fitness where one is required is a misdemeanor with a \$500 fine. Due to the workload experienced by our court system, minor crimes like this are not generally worth the time of prosecutors and courts. As a result, the state is left with a cease and desist order, but no effective punitive sanctions.

- **What's the difference between an administrative fine, a violation, and a misdemeanor?**

Administrative fines are civil penalties. These fines are issued on a form provided by the department and do not require an appearance before a judge.

A violation is a noncriminal offense punishable only by a fine. The citation process in HB 255 describes the method for issuing a violation. It is treated much like a traffic ticket: a person receives a written citation and has a mandatory appearance in district court where there is an opportunity to request a trial before a judge.

A misdemeanor is a criminal offense that, under current certificate of fitness law, comes with a fine of up to \$500. Enforcement requires the department to request a district attorney to prosecute. A misdemeanor conviction goes on a person's criminal record.

- **Why does HB 255 create both an administrative fine and a violation? Why not just one or the other?**

The dual enforcement tools of administrative fines and violations create effective enforcement that fits the nature of the offense. Administrative fines provide a way to enforce certificate of fitness requirements without a high cost burden on the department, the defendant, or the court system. They are effective in the vast majority of cases. Unfortunately, administrative fines are less effective when a violator refuses to pay, or continues to work without a certificate of fitness, considering these fines the cost of doing business. While very few and far between,

these violators can create a disproportionate impact on local businesses, consumers, and public safety by operating as rogue electricians or plumbers.

In the few cases where administrative fines are not effective, the department would issue a citation for a violation. The citation process requires more resources, since there is a mandatory court appearance. The court takes responsibility for the collections. In addition, a violation is recorded on Court View, creating a public record for potential future clients of these repeat offenders.

- **What about my due process rights? How would I appeal?**

A person would have 30 days to challenge an administrative fine and demand a hearing before a hearing officer at the Department of Labor & Workforce Development. The results of that hearing could be appealed to superior court, and after that to the Supreme Court.

A person committing a violation has the right to request a trial before the district (traffic) court judge. The defendant would have the same rights and opportunities to question their accuser as with a speeding ticket. Appeals would be handled the same way that traffic violations are handled today, using the state's Appellate Rules.

- **Would anyone be subject to higher fines than they would right now?**

No. In fact, under HB 255 the civil penalty fines are lower for first and second time individual defendants, and lower for first time employer defendants.

- **Will employees be punished for just doing what they are told?**

Most professional licensing laws recognize the role of individual responsibility. An employee conducting unlicensed commercial vehicle operation, hair cutting, or athletics training would be subject to penalties, and certificates of fitness are no different. In recognition of varying levels of responsibility, HB 255 excludes employees from being subject to a violation, and halves the administrative fine for employees working without certificates of fitness.

- **Does HB 255 add any new licensing requirements?**

No. This bill does not add any new license requirements, or change the scope of any existing licenses.