

Senator Lyle W. Hillyard proposes to substitute the following bill:

RESIDENCE LIENS RECOVERY FUND

AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

David L. Gladwell

This act modifies the Residence Lien Restriction and Lien Recovery Fund Act and related provisions of the Utah Construction Trades Licensing Act. The act adds factory built housing to the scope of the fund. The act repeals the lifetime cap on recovery from the fund. The act extends the filing deadline. The act requires the inclusion of instructions and a form affidavit and motion when serving a complaint on a homeowner.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

38-1-11, as last amended by Chapter 172, Laws of Utah 1995

38-11-102, as last amended by Chapter 193, Laws of Utah 1999

38-11-107, as last amended by Chapter 49, Laws of Utah 1998

38-11-203, as last amended by Chapter 193, Laws of Utah 1999

38-11-204, as last amended by Chapter 193, Laws of Utah 1999

38-11-207, as enacted by Chapter 308, Laws of Utah 1994

38-11-301, as last amended by Chapter 146, Laws of Utah 1996

58-55-302, as last amended by Chapter 317, Laws of Utah 2000

58-55-303, as renumbered and amended by Chapter 181, Laws of Utah 1994

58-55-501, as last amended by Chapters 233 and 317, Laws of Utah 2000

58-55-502, as last amended by Chapter 317, Laws of Utah 2000



25 **58-55-503**, as last amended by Chapters 100, 233 and 317, Laws of Utah 2000

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

27 Section 1. Section **38-1-11** is amended to read:

28 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**

29 **Instructions and form affidavit and motion.**

30 (1) A lien claimant shall file an action to enforce the lien filed under this chapter within:

31 (a) [~~twelve~~] 12 months from the date of final completion of the original contract not
32 involving a residence as defined in Section 38-11-102; or

33 (b) 180 days from the date the lien claimant last performed labor and services or last
34 furnished equipment or material for a residence, as defined in Section 38-11-102.

35 (2) (a) Within the time period provided for filing in Subsection (1) the lien claimant shall
36 file for record with the county recorder of each county in which the lien is recorded a notice of the
37 pendency of the action, in the manner provided in actions affecting the title or right to possession
38 of real property, or the lien shall be void, except as to persons who have been made parties to the
39 action and persons having actual knowledge of the commencement of the action.

40 (b) The burden of proof shall be upon the lien claimant and those claiming under him to
41 show actual knowledge.

42 (3) This section may not be interpreted to impair or affect the right of any person to whom
43 a debt may be due for any work done or materials furnished to maintain a personal action to
44 recover the same.

45 (4) (a) If a lien claimant files an action to enforce a lien filed under this chapter involving
46 a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of the
47 complaint on the owner of the residence:

48 (i) instructions to the owner of the residence relating to the owner's rights under Title 38,
49 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

50 (ii) a form affidavit and motion for summary judgment to enable the owner of the
51 residence to specify the grounds upon which the owner may exercise available rights under Title
52 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

53 (b) The lien claimant may file a notice to submit for decision on the motion for summary
54 judgment. The motion may be ruled upon after the service of the summons and complaint upon
55 the nonpaying party, as defined in Section 38-11-102, and the time for the nonpaying party to

56 respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

57 (c) The instructions and form affidavit and motion required by Subsection (4)(a) shall meet
58 the requirements established by rule by the Division of Occupational and Professional Licensing
59 in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

60 (d) If the nonpaying party, as defined by Section 38-11-102, files for bankruptcy protection
61 and there is a bankruptcy stay in effect, the motion for summary judgment and the action to enforce
62 the lien shall be stayed until resolution of the related claim under Title 38, Chapter 11, Residence
63 Lien Restriction and Lien Recovery Fund Act.

64 (e) If a lien claimant fails to provide to the owner of the residence the instructions and
65 form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining
66 or enforcing the lien upon the residence.

67 Section 2. Section **38-11-102** is amended to read:

68 **38-11-102. Definitions.**

69 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established under
70 Section 38-11-104.

71 (2) "Construction on an owner-occupied residence" means designing, engineering,
72 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
73 residence.

74 (3) "Department" means the Department of Commerce.

75 (4) "Director" means the director of the Division of Occupational and Professional
76 Licensing.

77 (5) "Division" means the Division of Occupational and Professional Licensing.

78 (6) "Encumbered fund balance" means the aggregate amount of all outstanding claims
79 against the fund. The remainder of monies in the fund are unencumbered funds.

80 (7) "Executive director" means the executive director of the Department of Commerce.

81 (8) "Factory built housing" is as defined in Section 58-56-3.

82 (9) "Factory built housing retailer" means a person that sells factory built housing to
83 consumers.

84 ~~(8)~~ (10) "Fund" means the Residence Lien Recovery Fund established under Section
85 38-11-201.

86 ~~(9)~~ (11) "Laborer" means a person who provides services at the site of the construction

87 on an owner-occupied residence as an employee of an original contractor or other qualified
88 beneficiary performing qualified services on the residence.

89 ~~[(10)]~~ (12) "Licensee" means any holder of a license issued under Title 58, Chapters 3a,
90 22, 53, and 55.

91 ~~[(11)]~~ (13) "Nonpaying party" means the original contractor, subcontractor, or real estate
92 developer who has failed to pay the qualified beneficiary making a claim against the fund.

93 ~~[(12)]~~ (14) "Original contractor" means a person who contracts with the owner of real
94 property or the owner's agent to provide services, labor, or material for the construction of an
95 owner-occupied residence.

96 ~~[(13)]~~ (15) "Owner" means a person who:

97 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
98 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
99 owner-occupied residence upon real property owned by that person;

100 (b) contracts with a real estate developer to buy a residence upon completion of the
101 construction on the owner-occupied residence; or

102 (c) buys a residence from a real estate developer after completion of the construction on
103 the owner-occupied residence.

104 ~~[(14)]~~ (16) "Owner-occupied residence" means a residence that is, or after completion of
105 the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as
106 a primary or secondary residence within 180 days from the date of the completion of the
107 construction on the residence.

108 ~~[(15)]~~ (17) "Qualified beneficiary" means a person who:

109 (a) provides qualified services;

110 (b) pays all necessary fees or assessment required under this chapter; and

111 (c) registers with the division:

112 (i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks
113 recovery from the fund as a licensed contractor; or

114 (ii) as a person providing qualified services other than as a licensed contractor under
115 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a
116 licensed contractor.

117 ~~[(16)]~~ (18) (a) "Qualified services" means the following performed in construction on an

118 owner-occupied residence:

119 ~~[(a)]~~ (i) contractor services provided by a contractor licensed or exempt from licensure
120 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

121 ~~[(b)]~~ (ii) architectural services provided by an architect licensed under Title 58, Chapter
122 3a;

123 ~~[(c)]~~ (iii) engineering and land surveying services provided by a professional engineer or
124 land surveyor licensed or exempt from licensure under Title 58, Chapter 22;

125 ~~[(d)]~~ (iv) landscape architectural services by a landscape architect licensed or exempt from
126 licensure under Title 58, Chapter 53;

127 ~~[(e)]~~ (v) design and specification services of mechanical or other systems;

128 ~~[(f)]~~ (vi) other services related to the design, drawing, surveying, specification, cost
129 estimation, or other like professional services;

130 ~~[(g)]~~ (vii) providing materials, supplies, components, or similar products;

131 ~~[(h)]~~ (viii) renting equipment or materials; ~~[and]~~

132 ~~[(i)]~~ (ix) labor at the site of the construction on the owner-occupied residence[-]; and

133 (x) site preparation, set up, and installation of factory built housing.

134 (b) "Qualified services" do not include the construction of factory built housing in the
135 factory.

136 ~~[(17)]~~ (19) "Real estate developer" means a person having an ownership interest in real
137 property who contracts for the construction of a residence that is offered for sale to the public.

138 ~~[(18)]~~ (20) "Residence" means an improvement to real property used or occupied, to be
139 used or occupied as, or in conjunction with, a primary or secondary detached single-family
140 dwelling or multifamily dwelling up to two units, including factory built housing.

141 ~~[(19)]~~ (21) "Subsequent owner" means a person who purchases a residence from an owner
142 within 180 days from the date of the completion of the construction on the residence.

143 Section 3. Section **38-11-107** is amended to read:

144 **38-11-107. Restrictions upon maintaining a lien against residence or owner's interest**
145 **in the residence.**

146 (1) A person qualified to file a lien upon an owner-occupied residence and the real
147 property associated with that residence under the provisions of Title 38, Chapter 1, Mechanics'
148 Liens, who provides qualified services under an agreement effective on or after January 1, 1995,

149 other than directly with the owner, shall be barred after January 1, 1995, from maintaining a lien
150 upon that residence and real property or recovering a judgment in any civil action against the
151 owner or the owner-occupied residence to recover monies owed for qualified services provided
152 by that person if:

153 (a) the conditions described in Subsections 38-11-204(3)(a) and (3)(b) are met; or

154 (b) (i) a subsequent owner purchases a residence from an owner;

155 (ii) the subsequent owner who purchased the residence under Subsection (1)(b)(i) occupies
156 the residence as a primary or secondary residence within 180 days from the date of transfer or the
157 residence is occupied by the subsequent owner's tenant or lessee as a primary or secondary
158 residence within 180 days from the date of transfer; and

159 (iii) the owner from whom the subsequent owner purchased the residence met the
160 conditions described in Subsections 38-11-204(3)(a) and (3)(b).

161 (2) If a residence is constructed under conditions that do not meet all of the provisions of
162 Subsection (1), that residence and the real property associated with that residence as defined in
163 Section 38-1-4, shall be subject to any mechanics' lien as provided in Section 38-1-3.

164 (3) A lien claimant who files a mechanics' lien or foreclosure action upon an
165 owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and
166 38-1-18 or for any damages arising from a civil action related to the lien filing or foreclosure
167 action if the lien claimant removes the lien within ten days from the date the owner establishes
168 compliance, through written findings of fact from a court of competent jurisdiction or, in cases
169 where a bankruptcy has been filed, from the director, with the requirements of Subsections
170 38-11-204(3)(a) and (3)(b).

171 Section 4. Section **38-11-203** is amended to read:

172 **38-11-203. Disbursements from the fund -- Limitations.**

173 (1) A payment of any claim upon the fund by a qualified beneficiary shall be made only
174 upon an order issued by the director finding that:

175 (a) the claimant was a qualified beneficiary during the construction on a residence;

176 (b) the claimant complied with the requirements of Section 38-11-204; and

177 (c) there is adequate money in the fund to pay the amount ordered.

178 (2) A payment of a claim upon the fund by a laborer shall be made only upon an order
179 issued by the director finding that:

180 (a) the laborer complied with the requirements of Subsection 38-11-204(6); and

181 (b) there is adequate money in the fund to pay the amount ordered.

182 (3) (a) An order under this section may be issued only after the division has complied with
183 the procedures established by rule under Section 38-11-105.

184 (b) The director shall order payment of the qualified services as established by evidence,
185 or if the claimant has obtained a judgment, then in the amount awarded for qualified services in
186 the judgment to the extent the qualified services are attributable to the owner-occupied residence
187 at issue in the claim.

188 (c) The director shall order payment of interest on all amounts claimed for qualified
189 services at the rate of 12%, annual percentage rate, from the date payment was due to the date the
190 claim is approved for payment except for delays attributable to the claimant.

191 (d) The director shall order payment of costs in the amount stated in the judgment. If the
192 judgment does not state a sum certain for costs, or if no judgment has been obtained, the director
193 shall order payment of reasonable costs as supported by evidence. The claim application fee as
194 established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

195 (e) The director shall order payment of attorney's fees in the amount stated in a judgment.

196 (4) (a) Payments made from the fund may not exceed~~[-(i)]~~ \$75,000 per ~~[residence]~~
197 construction project to all qualified beneficiaries and laborers who have claim against the fund for
198 that ~~[residence, and]~~ construction project.

199 ~~[(ii) \$500,000 per qualified beneficiary or laborer for payments to the qualified beneficiary
200 over the qualified beneficiary's lifetime.]~~

201 (b) If claims against the fund for a ~~[residence]~~ construction project exceed \$75,000, the
202 \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded
203 compensation from the fund for qualified services shall receive an identical percentage of the
204 qualified beneficiary's or laborer's award.

205 (5) Subject to the limitations of Subsection (4), if on the day the order is issued there are
206 inadequate funds to pay the entire claim and the director determines that the claimant has otherwise
207 met the requirements of Subsection (1) or (2), the director shall order additional payments once
208 the fund meets the balance limitations of Section 38-11-206.

209 Section 5. Section **38-11-204** is amended to read:

210 **38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications**

211 **to receive compensation.**

212 (1) To claim recovery from the fund a person shall:

213 (a) meet the requirements of either Subsection (3) or (6);

214 (b) pay an application fee determined by the division under Section 63-38-3.2; and

215 (c) file with the division a completed application on a form provided by the division
216 accompanied by supporting documents establishing:

217 (i) that the person meets the requirements of either Subsection (3) or (6);

218 (ii) that the person was a qualified beneficiary or laborer during the construction on the
219 owner-occupied residence; and

220 (iii) the basis for the claim.

221 (2) To recover from the fund, the application required by Subsection (1) shall be filed no
222 later than ~~[120 days]~~ one year:

223 (a) from the date the judgment required by Subsection (3)(c) is entered;

224 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from
225 obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the
226 nonpaying party filed bankruptcy within ~~[120 days]~~ one year after the entry of judgment; or

227 (c) if a laborer, from the date the laborer completed the laborer's qualified services.

228 (3) To recover from the fund, regardless of whether the residence is occupied by the
229 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
230 beneficiary shall establish that:

231 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
232 written contract with an original contractor licensed or exempt from licensure under Title 58,
233 Chapter 55, Utah Construction Trades Licensing Act, for the performance of qualified services,
234 to obtain the performance of qualified services by others, or for the supervision of the performance
235 by others of qualified services in construction on that residence; ~~[or]~~

236 (ii) the owner of the owner-occupied residence or the owner's agent entered into a written
237 contract with a real estate developer for the purchase of an owner-occupied residence; or

238 (iii) the owner of the owner-occupied residence or the owner's agent entered into a written
239 contract with a factory built housing retailer for the purchase of an owner-occupied residence;

240 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
241 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

242 [~~both,~~] factory built housing retailer under Subsection (3)(a)[~~(i) or (ii)~~] with whom the owner has
243 a written contract in accordance with the written contract and any amendments to the contract, and:

244 (i) the original contractor [~~or real estate developer~~], licensed or exempt from licensure
245 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or
246 the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled
247 to payment under an agreement with that original contractor or real estate developer licensed or
248 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
249 services performed or materials supplied by the qualified beneficiary;

250 (ii) a subcontractor who contracts with the original contractor [~~or real estate developer~~],
251 licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing
252 Act, the real estate developer, or the factory built housing retailer failed to pay a qualified
253 beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

254 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified
255 beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

256 (c) (i) the qualified beneficiary filed:

257 (A) an action against the nonpaying party to recover monies owed him within 180 days
258 from the date the qualified beneficiary last provided qualified services, unless precluded from
259 doing so by the nonpaying party's bankruptcy filing within the 180 days after completion of
260 services; and

261 (B) a notice of commencement of action with the division within 30 days from the date the
262 qualified beneficiary filed the civil action if a civil action was filed as required by Subsection
263 (3)(c)(i)(A);

264 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
265 failed to pay the qualified beneficiary under an agreement to provide qualified services for
266 construction of that owner-occupied residence;

267 (iii) (A) the qualified beneficiary has obtained from a court of competent jurisdiction the
268 issuance of an order requiring the judgment debtor, or if a corporation any officer of the
269 corporation, to appear before the court at a specified time and place to answer concerning the
270 debtor's or corporation's property, has received return of service of the order from a person
271 qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b), and has made
272 reasonable efforts to obtain asset information from the supplemental proceedings; and

273 (B) if assets subject to execution are discovered as a result of the order required under
274 Subsection (3)(c)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from
275 a court of competent jurisdiction; or

276 (iv) the claimant timely filed a proof of claim where permitted in the bankruptcy action,
277 if the nonpaying party has filed bankruptcy; and

278 (d) the qualified beneficiary is not entitled to reimbursement from any other person.

279 (4) The requirements of Subsection [~~38-11-204~~](3)(c) need not be met if the qualified
280 beneficiary has been precluded from obtaining a judgment against the nonpaying party or from
281 satisfying the requirements of Subsection [~~38-11-204~~](3)(c) because the nonpaying party filed
282 bankruptcy.

283 (5) If a qualified beneficiary fails to file the notice with the division required under
284 Subsection (3)(c)(i)(B), the claim of the qualified beneficiary shall be paid:

285 (a) if otherwise qualified under this chapter;

286 (b) to the extent that the limit of Subsection 38-11-203(4)(a)(i) has not been reached by
287 payments from the fund to qualified beneficiaries who have complied with the notice requirements
288 of Subsection (3)(c)(i)(B); and

289 (c) in the order that the claims are filed by persons who fail to comply with Subsection
290 (3)(c)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a)(i).

291 (6) To recover from the fund a laborer shall:

292 (a) establish that the laborer has not been paid wages due for the work performed at the
293 site of a construction on an owner-occupied residence; and

294 (b) provide any supporting documents or information required by rule by the division.

295 (7) A fee determined by the division under Section 63-38-3.2 shall be deducted from any
296 recovery from the fund received by a laborer.

297 (8) The requirements of Subsection (3)(a)(i) may be satisfied if a claimant establishes to
298 the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent
299 entered into a written contract with an original contractor who:

300 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
301 Construction Trades Licensing Act, but was solely owned by an individual that was licensed under
302 Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

303 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah

304 Construction Trades Licensing Act, but who was the sole owner and qualifier of a business entity
305 that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

306 Section 6. Section **38-11-207** is amended to read:

307 **38-11-207. Reimbursement to the fund.**

308 (1) If the director disburses monies from the fund as a result of a person licensed under
309 Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified beneficiary failing
310 to pay qualified beneficiaries[~~, the licensee or qualified beneficiary shall reimburse the fund within~~
311 90 days from]:

312 (a) the division shall issue a notice of the disbursement from the fund[:] and the obligation
313 to reimburse the fund to the licensee or qualified beneficiary; and

314 (b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the
315 issuance of the notice required by Subsection (1)(a).

316 (2) The notice required by Subsection (1)(a) shall meet the requirements established by
317 rule by the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
318 Act.

319 (3) (a) A finding of fact in an administrative action that a payment of any amount has been
320 made from the fund in settlement of a claim arising from the act, representation, transaction, or
321 conduct of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act,
322 in violation of Section 58-55-603 shall result in the immediate suspension of that person's license
323 without further compliance with Title 63, Chapter 46b, Administrative Procedures Act.

324 (b) The finding of fact for Subsection (3)(a) may be made in the same administrative
325 action as the related claim and may be included in the findings required by Section 38-11-203.

326 (c) The suspension required by Subsection (3)(a) shall remain in effect until the person
327 applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and
328 58-55-303.

329 Section 7. Section **38-11-301** is amended to read:

330 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**
331 **Affidavit.**

332 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title 58,
333 Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly
334 engage in providing qualified services shall be automatically registered as a qualified beneficiary

335 upon payment of the initial assessment.

336 (2) A person applying for licensure as a contractor after July 1, 1995, in license
337 classifications that regularly engage in providing qualified services shall be automatically
338 registered as a qualified beneficiary upon issuance of a license and payment of the initial
339 assessment.

340 (3) (a) After July 1, 1995, any person providing qualified services as other than a
341 contractor as provided in Subsection (1) or any person exempt from licensure under the provisions
342 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a qualified
343 beneficiary by:

344 (i) submitting an application in a form prescribed by the division;

345 (ii) demonstrating registration with the Division of Corporations and Commercial Code
346 as required by state law;

347 (iii) paying a registration fee determined by the division under Section 63-38-3.2; and

348 (iv) paying the initial assessment established under Subsection (4), and any special
349 assessment determined by the division under Subsection 38-11-206(1).

350 (b) A person [~~other than a contractor~~] who does not register under Subsection (1), (2), or
351 (3)(a) shall be prohibited from recovering under the fund as a qualified beneficiary for work
352 performed as qualified services while not registered with the fund.

353 (4) (a) An applicant shall pay an initial assessment determined by the division under
354 Section 63-38-3.2.

355 (b) The initial assessment to qualified registrants under Subsection (1) shall be made not
356 later than July 15, 1995, and shall be paid no later than November 1, 1995.

357 (c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be
358 paid at the time of application for license or registration, however, beginning on May 1, 1996, only
359 one initial assessment or special assessments thereafter shall be required for persons having
360 multiple licenses under this section.

361 (5) A person shall be considered to have been registered as a qualified beneficiary on
362 January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if the
363 person:

364 (a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title
365 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly

366 engage in providing qualified services; or

367 (ii) provides qualified services after July 1, 1995, as other than a contractor as provided
368 in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55,
369 Utah Construction Trades Licensing Act; and

370 (b) registers as a qualified beneficiary under Subsection (1) or (3) on or before November
371 1, 1995.

372 Section 8. Section **58-55-302** is amended to read:

373 **58-55-302. Qualifications for licensure.**

374 (1) Each applicant for a license under this chapter shall:

375 (a) submit an application prescribed by the division;

376 (b) pay a fee as determined by the department under Section 63-38-3.2;

377 (c) (i) meet the examination requirements established by rule by the division in
378 collaboration with the appropriate board, except for the classifications of apprentice plumber,
379 residential apprentice plumber, and apprentice electrician for whom no examination is required;

380 or

381 (ii) the individual qualifier must pass the required examination if the applicant is a
382 business entity;

383 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;

384 (e) if an applicant for a contractor's license:

385 (i) produce satisfactory evidence of financial responsibility, except for construction trades
386 instructor for whom evidence of financial responsibility is not required;

387 (ii) produce satisfactory evidence of knowledge and experience in the construction industry
388 and knowledge of the principles of the conduct of business as a contractor, reasonably necessary
389 for the protection of the public health, safety, and welfare; and

390 (iii) be a licensed master electrician if an applicant for an electrical contractor's license or
391 a licensed master residential electrician if an applicant for a residential electrical contractor's
392 license; or

393 (iv) be a journeyman plumber or residential journeyman plumber if an applicant for a
394 plumbing contractor's license; and

395 (f) if an applicant for a construction trades instructor license, satisfy any additional
396 requirements established by rule.

397 (2) After approval of an applicant for a contractor's license by the board and the division,
398 the applicant shall file the following with the division before the division issues the license:

399 (a) proof of workers' compensation insurance which covers employees of the applicant in
400 accordance with applicable Utah law;

401 (b) proof of public liability insurance in coverage amounts and form established by rule
402 except for a construction trades instructor for whom public liability insurance is not required; and

403 (c) proof of registration as required by applicable law with the:

404 (i) Utah Department of Commerce;

405 (ii) Division of Corporations and Commercial Code;

406 (iii) Division of Workforce Information and Payment Services in the Department of
407 Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

408 (iv) State Tax Commission; and

409 (v) Internal Revenue Service.

410 (3) In addition to the general requirements for each applicant in Subsection (1), applicants
411 shall comply with the following requirements to be licensed in the following classifications:

412 (a) A journeyman plumber applicant shall produce:

413 (i) satisfactory evidence of successful completion of the equivalent of at least four years
414 of full-time training and instruction as a licensed apprentice plumber under supervision of a
415 licensed journeyman plumber and in accordance with a planned program of training approved by
416 the division;

417 (ii) satisfactory evidence of at least eight years of full-time experience approved by the
418 division in collaboration with the Plumbers Licensing Board; or

419 (iii) satisfactory evidence of meeting the qualifications determined by the division and
420 board to be equivalent to Subsection (3)(a)(i) or (a)(ii).

421 (b) A residential journeyman plumber shall produce satisfactory evidence of completion
422 of:

423 (i) the equivalent of at least three years of full-time training and instruction as a licensed
424 apprentice plumber under the supervision of a licensed residential journeyman plumber or licensed
425 journeyman plumber in accordance with a planned program of training approved by the division;

426 (ii) at least six years of full-time experience in a maintenance or repair trade involving
427 substantial plumbing work; or

428 (iii) satisfactory evidence of meeting the qualifications determined by the division and
429 board to be equivalent to Subsection (3)(b)(i) or (b)(ii).

430 (c) A master electrician applicant shall produce satisfactory evidence that he either:

431 (i) is a graduate electrical engineer of an accredited college or university approved by the
432 division and has one year of practical electrical experience as a licensed apprentice electrician;

433 (ii) is a graduate of an electrical trade school, having received an associate of applied
434 sciences degree following successful completion of a course of study approved by the division, and
435 has two years of practical experience as a licensed journeyman electrician;

436 (iii) is a graduate of an electrical trade school, having received a certificate of completion
437 following successful completion of a course of study approved by the division, and has four years
438 of practical experience as a journeyman electrician;

439 (iv) has at least eight years of practical experience under the supervision of a licensed
440 journeyman or master electrician; or

441 (v) meets the qualifications determined by the division and board to be equivalent to these
442 qualifications.

443 (d) A master residential electrician applicant shall produce satisfactory evidence that he:

444 (i) has at least two years of practical experience as a residential journeyman electrician;

445 or

446 (ii) meets the qualifications determined by the division and board to be equivalent to this
447 practical experience.

448 (e) A journeyman electrician applicant shall produce satisfactory evidence that he either:

449 (i) has successfully completed at least four years of full-time training and instruction as
450 a licensed apprentice electrician under the supervision of a master electrician or journeyman
451 electrician and in accordance with a planned training program approved by the division;

452 (ii) has six years of practical experience in wiring, installing, and repairing electrical
453 apparatus and equipment for light, heat, and power under the supervision of a licensed master or
454 journeyman electrician; or

455 (iii) meets the qualifications determined by the division and board to be equivalent to these
456 qualifications.

457 (f) A residential journeyman electrician applicant shall produce satisfactory evidence that
458 he:

459 (i) has successfully completed two years of training in an electrical training program
460 approved by the division;

461 (ii) has four years of practical experience in wiring, installing, and repairing electrical
462 apparatus and equipment for light, heat, and power under the supervision of a licensed master,
463 journeyman, residential master, or residential journeyman electrician; or

464 (iii) meets the qualifications determined by the division and board to be equivalent to
465 Subsection (3)(f)(i) or (f)(ii).

466 (g) The conduct of licensed apprentice electricians and their licensed supervisors shall be
467 in accordance with the following:

468 (i) A licensed apprentice electrician shall be under the immediate supervision of a licensed
469 master, journeyman, residential master, or residential journeyman electrician. An apprentice in
470 the fourth year of training may work without supervision for a period not to exceed eight hours in
471 any 24-hour period.

472 (ii) A licensed master, journeyman, residential master, or residential journeyman
473 electrician may have under his immediate supervision on a residential project up to three licensed
474 apprentice electricians.

475 (iii) A licensed master or journeyman electrician may have under his immediate
476 supervision on nonresidential projects only one licensed apprentice electrician.

477 (h) An alarm company applicant shall:

478 (i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of
479 the applicant who:

480 (A) demonstrates 6,000 hours of experience in the alarm company business;

481 (B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm
482 company business or in a construction business; and

483 (C) passes an examination component established by rule by the division in collaboration
484 with the board;

485 (ii) if a corporation, provide:

486 (A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of
487 all corporate officers, directors, and those responsible management personnel employed within the
488 state or having direct responsibility for managing operations of the applicant within the state; and

489 (B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of

490 all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall
491 not be required if the stock is publicly listed and traded;

492 (iii) if a limited liability company, provide:

493 (A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of
494 all company officers, and those responsible management personnel employed within the state or
495 having direct responsibility for managing operations of the applicant within the state; and

496 (B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of
497 all individuals owning 5% or more of the equity of the company;

498 (iv) if a partnership, the names, addresses, dates of birth, social security numbers, and
499 fingerprint cards of all general partners, and those responsible management personnel employed
500 within the state or having direct responsibility for managing operations of the applicant within the
501 state;

502 (v) if a proprietorship, the names, addresses, dates of birth, social security numbers, and
503 fingerprint cards of the proprietor, and those responsible management personnel employed within
504 the state or having direct responsibility for managing operations of the applicant within the state;

505 (vi) be of good moral character in that officers, directors, shareholders described in
506 Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have not
507 been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when
508 considered with the duties and responsibilities of an alarm company is considered by the division
509 and the board to indicate that the best interests of the public are served by granting the applicant
510 a license;

511 (vii) document that none of the applicant's officers, directors, shareholders described in
512 Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have been
513 declared by any court of competent jurisdiction incompetent by reason of mental defect or disease
514 and not been restored;

515 (viii) document that none of the applicant's officers, directors, shareholders described in
516 Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel are currently
517 suffering from habitual drunkenness or from drug addiction or dependence;

518 (ix) file and maintain with the division evidence of:

519 (A) comprehensive general liability insurance in form and in amounts to be established
520 by rule by the division in collaboration with the board;

521 (B) workers' compensation insurance that covers employees of the applicant in accordance
522 with applicable Utah law; and

523 (C) registration as is required by applicable law with the:

524 (I) Division of Corporations and Commercial Code;

525 (II) Division of Workforce Information and Payment Services in the Department of
526 Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

527 (III) State Tax Commission; and

528 (IV) Internal Revenue Service; and

529 (x) meet with the division and board.

530 (i) Each applicant for licensure as an alarm company agent shall:

531 (i) submit an application in a form prescribed by the division accompanied by fingerprint
532 cards;

533 (ii) pay a fee determined by the department under Section 63-38-3.2;

534 (iii) be of good moral character in that the applicant has not been convicted of a felony,
535 a misdemeanor involving moral turpitude, or any other crime that when considered with the duties
536 and responsibilities of an alarm company agent is considered by the division and the board to
537 indicate that the best interests of the public are served by granting the applicant a license;

538 (iv) not have been declared by any court of competent jurisdiction incompetent by reason
539 of mental defect or disease and not been restored;

540 (v) not be currently suffering from habitual drunkenness or from drug addiction or
541 dependence; and

542 (vi) meet with the division and board if requested by the division or the board.

543 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
544 division may make rules establishing when Federal Bureau of Investigation records shall be
545 checked for applicants as an alarm company or alarm company agent.

546 (5) To determine if an applicant meets the qualifications of Subsections (3)(h)(vi) and
547 (3)(i)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
548 Department of Public Safety with the division's request to:

549 (a) conduct a search of records of the Department of Public Safety for criminal history
550 information relating to each applicant for licensure as an alarm company or alarm company agent
551 and each applicant's officers, directors, and shareholders described in Subsection (3)(h)(ii)(B),

552 partners, proprietors, and responsible management personnel; and

553 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
554 requiring a check of records of the F.B.I. for criminal history information under this section.

555 (6) The Department of Public Safety shall send to the division:

556 (a) a written record of criminal history, or certification of no criminal history record, as
557 contained in the records of the Department of Public Safety in a timely manner after receipt of a
558 fingerprint card from the division and a request for review of Department of Public Safety records;
559 and

560 (b) the results of the F.B.I. review concerning an applicant in a timely manner after receipt
561 of information from the F.B.I.

562 (7) (a) The division shall charge each applicant for licensure as an alarm company or alarm
563 company agent a fee, in accordance with Section 63-38-3.2, equal to the cost of performing the
564 records reviews under this section.

565 (b) The division shall pay the Department of Public Safety the costs of all records reviews,
566 and the Department of Public Safety shall pay the F.B.I. the costs of records reviews under this
567 section.

568 (8) Information obtained by the division from the reviews of criminal history records of
569 the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only
570 for the purpose of determining if an applicant for licensure as an alarm company or alarm company
571 agent is qualified for licensure.

572 (9) (a) An application for licensure under this chapter shall be denied if:

573 (i) the applicant has had a previous license, which was issued under this chapter,
574 suspended or revoked within one year prior to the date of the applicant's application;

575 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

576 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
577 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status,
578 performing similar functions, or directly or indirectly controlling the applicant has served in any
579 similar capacity with any person or entity which has had a previous license, which was issued
580 under this chapter, suspended or revoked within one year prior to the date of the applicant's
581 application; or

582 (iii) (A) the applicant is an individual or sole proprietorship; and

583 (B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection
584 (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter,
585 suspended or revoked within one year prior to the date of the applicant's application.

586 (b) An application for licensure under this chapter shall be reviewed by the appropriate
587 licensing board prior to approval if:

588 (i) the applicant has had a previous license, which was issued under this chapter,
589 suspended or revoked more than one year prior to the date of the applicant's application;

590 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

591 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
592 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status,
593 performing similar functions, or directly or indirectly controlling the applicant has served in any
594 similar capacity with any person or entity which has had a previous license, which was issued
595 under this chapter, suspended or revoked more than one year prior to the date of the applicant's
596 application; or

597 (iii) (A) the applicant is an individual or sole proprietorship; and

598 (B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection
599 (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter,
600 suspended or revoked more than one year prior to the date of the applicant's application.

601 Section 9. Section **58-55-303** is amended to read:

602 **58-55-303. Term of license -- Expiration -- Renewal.**

603 (1) Each license issued under this chapter shall be issued in accordance with a two-year
604 renewal cycle established by rule. The division may by rule extend or shorten a renewal period
605 by as much as one year to stagger the renewal cycle it administers.

606 (2) At the time of renewal, the licensee shall show satisfactory evidence of continuing
607 financial responsibility as required under Section 58-55-306.

608 (3) Each license automatically expires on the expiration date shown on the license unless
609 the licensee renews the license in accordance with Section 58-1-308.

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

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

614 any outstanding citations or disciplinary actions with the division, satisfy any Section 58-55-503
615 judgment and sentence or nontrial resolution, complete a new financial responsibility review as
616 required under Section 58-55-306, using only titled assets, and pay in full any reimbursement
617 amount as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund
618 Act.

619 Section 10. Section **58-55-501** is amended to read:

620 **58-55-501. Unlawful conduct.**

621 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

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

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

647 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
648 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,
649 or residential electrician, failing to directly supervise an apprentice under one's supervision or
650 exceeding the number of apprentices one is allowed to have under his supervision;

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

657 (14) employing as an alarm company an unlicensed individual as an alarm company agent,
658 except as permitted under the exemption from licensure provisions under Section 58-1-307;

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

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

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

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

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

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

668 (e) the laws governing withholdings for employee state and federal income taxes,
669 unemployment taxes, FICA, or other required withholdings; or

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

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

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

676 or

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

679 Section 11. Section **58-55-502** is amended to read:

680 **58-55-502. Unprofessional conduct.**

681 Unprofessional conduct includes:

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

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

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

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

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

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

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

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

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

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

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

696 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
697 specifications, or abandonment or failure to complete a project without the consent of the owner
698 or his duly authorized representative or the consent of any other person entitled to have the
699 particular project completed in accordance with the plans, specifications, and contract terms;

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

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

706 (d) failure to reimburse the Residence Lien Recovery Fund [~~within 90 days after any~~

707 ~~disbursement from the fund resulting from the licensee's failure to pay qualified beneficiaries as~~
708 ~~provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act] as~~
709 ~~required by Section 38-11-207;~~

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

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

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

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

717 (7) failing to comply with operating standards established by rule in accordance with
718 Section 58-55-308.

719 Section 12. Section **58-55-503** is amended to read:

720 **58-55-503. Penalty for unlawful conduct -- Citations.**

721 (1) Any person who violates Subsections 58-55-501(1), (2), (3), (9), (10), (12), or (17),
722 or who fails to comply with a citation issued under this section after it is final, is guilty of a class
723 A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) may not be
724 awarded and may not accept a contract for the performance of the work.

725 (2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an
726 infraction unless the violator did so with the intent to deprive the person to whom money is to be
727 paid of the money received, in which case the violator is guilty of theft, as classified in Section
728 76-6-412.

729 (3) Grounds for immediate suspension of the licensee's license by the division and the
730 board include the issuance of a citation for violation of Section 58-55-501 or the failure by a
731 licensee to make application to, report to, or notify the division with respect to any matter for
732 which application, notification, or reporting is required under this chapter or rules adopted under
733 this chapter, including applying to the division for a new license to engage in a new specialty
734 classification or to do business under a new form of organization or business structure, filing with
735 the division current financial statements, notifying the division concerning loss of insurance
736 coverage, or change in qualifier.

737 (4) (a) If upon inspection or investigation, the division concludes that a person has violated

738 the provisions of Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or any rule or order
739 issued with respect to these subsections, and that disciplinary action is appropriate, the director or
740 his designee from within the division for each alternative respectively, shall, promptly issue a
741 citation to the person according to this chapter and any pertinent rules, attempt to negotiate a
742 stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted
743 under Title 63, Chapter 46b, Administrative Procedures Act.

744 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3),
745 (9), (10), (12), [~~or~~] (14), or (19), as evidenced by an uncontested citation, a stipulated settlement,
746 or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
747 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating
748 Subsection 58-55-501(1), (2), (3), (9), (10), (12), [~~or~~] (14), or (19).

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

751 (b) Each citation shall be in writing and describe with particularity the nature of the
752 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
753 violated. The citation shall clearly state that the recipient must notify the division in writing within
754 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
755 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
756 explain the consequences of failure to timely contest the citation or to make payment of any fines
757 assessed by the citation within the time specified in the citation.

758 (c) Each citation issued under this section, or a copy of each citation, may be served upon
759 any person upon whom a summons may be served in accordance with the Utah Rules of Civil
760 Procedure and may be made personally or upon his agent by a division investigator or by any
761 person specially designated by the director or by mail.

762 (d) If within 20 calendar days from the service of a citation, the person to whom the
763 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
764 order of the division and is not subject to further agency review. The period to contest a citation
765 may be extended by the division for cause.

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

768 (f) The failure of an applicant for licensure to comply with a citation after it becomes final

769 is a ground for denial of license.

770 (g) No citation may be issued under this section after the expiration of six months
771 following the occurrence of any violation.

772 (h) Fines shall be assessed by the director or his designee according to the following:

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

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

775 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
776 \$2,000 for each day of continued offense.

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

779 (A) the division previously issued a final order determining that a person committed a first
780 or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), ~~(14)~~, or
781 (19); or

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

783 (II) no final order has been issued by the division in the action initiated under Subsection
784 (4) (i)(i)(B)(I);

785 (III) the division determines during an investigation that occurred after the initiation of the
786 action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent violation
787 of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), ~~(14)~~, or (19); and

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

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

793 (5) Any penalty imposed by the director under Subsection (4) (h) shall be deposited into
794 the Commerce Service Fund. Any penalty which is not paid may be collected by the director by
795 either referring the matter to a collection agency or bringing an action in the district court of the
796 county in which the person against whom the penalty is imposed resides or in the county where
797 the office of the director is located. Any county attorney or the attorney general of the state is to
798 provide legal assistance and advice to the director in any action to collect the penalty. In any
799 action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall

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800 be awarded.