

**RESIDENCE LIEN RECOVERY FUND**

**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Stephen D. Clark**

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**LONG TITLE**

**General Description:**

This bill creates an exemption from registration with the Residence Lien Recovery Fund for nonresidential contractors.

**Highlighted Provisions:**

This bill:

- ▶ creates an exemption from registration with the Residence Lien Recovery Fund for contractors who do not participate in residential construction;
- ▶ sets penalties for violations; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-11-301**, as last amended by Chapter 198, Laws of Utah 2001

**58-55-503**, as last amended by Chapters 33 and 241, Laws of Utah 2002

ENACTS:

**38-11-303**, Utah Code Annotated 1953

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

29 Section 1. Section **38-11-301** is amended to read:

30 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**  
31 **Affidavit.**

32 (1) [~~A~~] Except as provided in Section 38-11-303, a person licensed as of July 1, 1995,  
33 as a contractor under the provisions of Title 58, Chapter 55, Utah Construction Trades  
34 Licensing Act, in license classifications that regularly engage in providing qualified services  
35 shall be automatically registered as a qualified beneficiary upon payment of the initial  
36 assessment.

37 (2) [~~A~~] Except as provided in Section 38-11-303, a person applying for licensure as a  
38 contractor after July 1, 1995, in license classifications that regularly engage in providing  
39 qualified services shall be automatically registered as a qualified beneficiary upon issuance of a  
40 license and payment of the initial assessment.

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

- 45 (i) submitting an application in a form prescribed by the division;
- 46 (ii) demonstrating registration with the Division of Corporations and Commercial Code  
47 as required by state law;
- 48 (iii) paying a registration fee determined by the division under Section 63-38-3.2; and
- 49 (iv) paying the initial assessment established under Subsection (4), and any special  
50 assessment determined by the division under Subsection 38-11-206(1).

51 (b) A person who does not register under Subsection (1), (2), or (3)(a) shall be  
52 prohibited from recovering under the fund as a qualified beneficiary for work performed as  
53 qualified services while not registered with the fund.

54 (4) (a) [~~A~~] Except as provided in Section 38-11-303, an applicant shall pay an initial  
55 assessment determined by the division under Section 63-38-3.2.

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

58 (c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be

59 paid at the time of application for license or registration, however, beginning on May 1, 1996,  
 60 only one initial assessment or special assessments thereafter shall be required for persons  
 61 having multiple licenses under this section.

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

65 (a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title  
 66 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that  
 67 regularly engage in providing qualified services; or

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

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

73 Section 2. Section **38-11-303** is enacted to read:

74 **38-11-303. Exemption from the fund -- Penalties for fraud.**

75 (1) A person licensed or applying for licensure or renewal as a contractor in license  
 76 classifications that regularly engage in providing qualified services shall be exempt from  
 77 registration as a qualified beneficiary under Section 38-11-301 ~~H~~ AND SHALL BE ISSUED A LIMITED  
 77a LICENSE ~~h~~ if the person signs an affidavit  
 78 at the time of licensure or renewal attesting that the person does not engage in providing  
 79 qualified services.

80 (2) Any person who signs an affidavit under Subsection (1) and then performs  
 81 qualified services shall:

82 (a) be guilty of a class A misdemeanor;

83 (b) pay all unpaid initial and special assessments that have been levied under the  
 84 Residence Lien Recovery Fund since the person obtained licensure; and

85 (c) be subject to Subsection 58-55-503(4).

86 (3) The division may contact all licensees prior to the 2005 license renewal cycle to  
 87 begin implementation of this section.

88 Section 3. Section **58-55-503** is amended to read:

89 **58-55-503. Penalty for unlawful conduct -- Citations.**

90 (1) Any person who violates Subsection 58-55-308(2) or Subsection 58-55-501(1), (2),  
91 (3), (4), (5), (6), (7), (9), (10), (12), (14), [~~or~~] (15), or (18), or who fails to comply with a  
92 citation issued under this section after it is final, is guilty of a class A misdemeanor. Any  
93 person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may  
94 not accept a contract for the performance of the work.

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

99 (3) Grounds for immediate suspension of the licensee's license by the division and the  
100 commission include the issuance of a citation for violation of Subsection 58-55-308(2) or  
101 Section 58-55-501 or the failure by a licensee to make application to, report to, or notify the  
102 division with respect to any matter for which application, notification, or reporting is required  
103 under this chapter or rules adopted under this chapter, including applying to the division for a  
104 new license to engage in a new specialty classification or to do business under a new form of  
105 organization or business structure, filing with the division current financial statements,  
106 notifying the division concerning loss of insurance coverage, or change in qualifier.

107 (4) (a) If upon inspection or investigation, the division concludes that a person has  
108 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),  
109 (10), (12), (14), (18), (19), or any rule or order issued with respect to these subsections, and  
110 that disciplinary action is appropriate, the director or the director's designee from within the  
111 division shall promptly issue a citation to the person according to this chapter and any pertinent  
112 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an  
113 adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures  
114 Act.

115 (i) Any person who is in violation of the provisions of Subsection 58-55-308(2) or  
116 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (18), or (19), as evidenced by an  
117 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative  
118 proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in  
119 lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2) or Subsection  
120 58-55-501(1), (2), (3), (9), (10), (12), (14), (18), or (19).

121 (ii) Except for a cease and desist order, the licensure sanctions cited in Section  
122 58-55-401 may not be assessed through a citation.

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

130 (c) Each citation issued under this section, or a copy of each citation, may be served  
131 upon any person upon whom a summons may be served:

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

133 (ii) personally or upon the person's agent by a division investigator or by any person  
134 specially designated by the director; or

135 (iii) by mail.

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

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

142 (f) The failure of an applicant for licensure to comply with a citation after it becomes  
143 final is a ground for denial of license.

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

146 (h) Fines shall be assessed by the director or the director's designee according to the  
147 following:

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

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

150 and

151 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to

152 \$2,000 for each day of continued offense.

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

155 (A) the division previously issued a final order determining that a person committed a  
156 first or second offense in violation of Subsection 58-55-308(2) or Subsection 58-55-501(1), (2),  
157 (3), (9), (10), (12), (14), (18), or (19); or

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

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

161 (III) the division determines during an investigation that occurred after the initiation of  
162 the action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent  
163 violation of the provisions of Subsection 58-55-308(2) or Subsection 58-55-501(1), (2), (3),  
164 (9), (10), (12), (14), (18), or (19); and

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

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

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

**Legislative Review Note**

as of 2-9-04 10:46 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0298**

**Residence Lien Recovery Fund Amendments**

*12-Feb-04*

*10:05 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Future assessment to individual contractors will be shifted to a smaller group of contractors.

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**Office of the Legislative Fiscal Analyst**