

1 **CONSTRUCTION TRADES LICENSING REVISIONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: James A. Dunnigan

6 Cosponsors: John L. Valentine

7 Curtis S. Bramble

8

9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Utah Construction Trades Licensing Act.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ reduces the number of days of a time interval in which an unincorporated entity is
15 required to submit an ownership status report;

16 ▶ provides for an automatic suspension of a license if the licensee becomes an
17 unincorporated entity or transfers the license to an unincorporated entity;

18 ▶ modifies financial responsibility provisions;

19 ▶ requires government entities to require a contractor to provide proof that the
20 contractor provides workers' compensation insurance, pays into the unemployment
21 insurance fund, and withholds applicable taxes from worker pay;

22 ▶ makes it unlawful conduct for an unincorporated entity to have an individual who is
23 an owner of the unincorporated entity engage in a construction trade while using a
24 Social Security number that does not belong to the individual;

25 ▶ makes it unlawful conduct for an unincorporated entity that provides labor to a
26 licensed entity to provide an individual who is an owner of the unincorporated
27 entity to engage in a construction trade while the individual is using a Social
28 Security number that does not belong to the individual; and

29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 **AMENDS:**

36 **58-55-302**, as last amended by Laws of Utah 2012, Chapter 192

37 **58-55-303**, as last amended by Laws of Utah 2011, Chapter 367

38 **58-55-306**, as last amended by Laws of Utah 2012, Chapter 192

39 **58-55-310**, as renumbered and amended by Laws of Utah 1994, Chapter 181

40 **58-55-501**, as last amended by Laws of Utah 2012, Chapter 278

41 **58-55-503**, as last amended by Laws of Utah 2011, Chapters 195, 340, and 413



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

44 Section 1. Section **58-55-302** is amended to read:

45 **58-55-302. Qualifications for licensure.**

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

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

48 (b) pay a fee as determined by the department under Section 63J-1-504;

49 (c) (i) meet the examination requirements established by rule by the commission with
50 the concurrence of the director, except for the classifications of apprentice plumber and
51 apprentice electrician for whom no examination is required; or

52 (ii) if required in Section 58-55-304, the individual qualifier must pass the required
53 examination if the applicant is a business entity;

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

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

56 (i) produce satisfactory evidence of financial responsibility, except for a construction

57 trades instructor for whom evidence of financial responsibility is not required;

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

61 (iii) (A) be a licensed master electrician if an applicant for an electrical contractor's
62 license or a licensed master residential electrician if an applicant for a residential electrical
63 contractor's license;

64 (B) be a licensed master plumber if an applicant for a plumbing contractor's license or
65 a licensed master residential plumber if an applicant for a residential plumbing contractor's
66 license; or

67 (C) be a licensed elevator mechanic and produce satisfactory evidence of three years
68 experience as an elevator mechanic if an applicant for an elevator contractor's license; and

69 (iv) when the applicant is an unincorporated entity, provide a list of the one or more
70 individuals who hold an ownership interest in the applicant as of the day on which the
71 application is filed that includes for each individual:

72 (A) the individual's name, address, birthdate, and Social Security number; and

73 (B) whether the individual will engage in a construction trade; and

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

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

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

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

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

- 85 (i) Utah Department of Commerce;
- 86 (ii) Division of Corporations and Commercial Code;
- 87 (iii) Unemployment Insurance Division in the Department of Workforce Services, for
- 88 purposes of Title 35A, Chapter 4, Employment Security Act;
- 89 (iv) State Tax Commission; and
- 90 (v) Internal Revenue Service.

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

- 94 (a) (i) A master plumber shall produce satisfactory evidence that the applicant:
 - 95 (A) has been a licensed journeyman plumber for at least two years and had two years of
 - 96 supervisory experience as a licensed journeyman plumber in accordance with division rule;
 - 97 (B) has received at least an associate of applied science degree or similar degree
 - 98 following the completion of a course of study approved by the division and had one year of
 - 99 supervisory experience as a licensed journeyman plumber in accordance with division rule; or
 - 100 (C) meets the qualifications determined by the division in collaboration with the board
 - 101 to be equivalent to Subsection (3)(a)(i)(A) or (B).

102 (ii) An individual holding a valid Utah license as a journeyman plumber, based on at
103 least four years of practical experience as a licensed apprentice under the supervision of a
104 licensed journeyman plumber and four years as a licensed journeyman plumber, in effect
105 immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current
106 master plumber license under this chapter, and satisfies the requirements of this Subsection
107 (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

108 (iii) An individual holding a valid plumbing contractor's license or residential
109 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
110 2008:

111 (A) considered to hold a current master plumber license under this chapter if licensed
112 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this

113 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
114 58-55-303; and

115 (B) considered to hold a current residential master plumber license under this chapter if
116 licensed as a residential plumbing contractor and a residential journeyman plumber, and
117 satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of
118 that license under Section 58-55-303.

119 (b) A master residential plumber applicant shall produce satisfactory evidence that the
120 applicant:

121 (i) has been a licensed residential journeyman plumber for at least two years and had
122 two years of supervisory experience as a licensed residential journeyman plumber in
123 accordance with division rule; or

124 (ii) meets the qualifications determined by the division in collaboration with the board
125 to be equivalent to Subsection (3)(b)(i).

126 (c) A journeyman plumber applicant shall produce satisfactory evidence of:

127 (i) successful completion of the equivalent of at least four years of full-time training
128 and instruction as a licensed apprentice plumber under supervision of a licensed master
129 plumber or journeyman plumber and in accordance with a planned program of training
130 approved by the division;

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

133 (iii) satisfactory evidence of meeting the qualifications determined by the board to be
134 equivalent to Subsection (3)(c)(i) or (c)(ii).

135 (d) A residential journeyman plumber shall produce satisfactory evidence of:

136 (i) completion of the equivalent of at least three years of full-time training and
137 instruction as a licensed apprentice plumber under the supervision of a licensed residential
138 master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in
139 accordance with a planned program of training approved by the division;

140 (ii) completion of at least six years of full-time experience in a maintenance or repair

141 trade involving substantial plumbing work; or

142 (iii) meeting the qualifications determined by the board to be equivalent to Subsection
143 (3)(d)(i) or (d)(ii).

144 (e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be
145 in accordance with the following:

146 (i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be
147 under the immediate supervision of a licensed master plumber, licensed residential master
148 plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

149 (ii) a licensed apprentice plumber in the fourth through tenth year of training may work
150 without supervision for a period not to exceed eight hours in any 24-hour period, but if the
151 apprentice does not become a licensed journeyman plumber or licensed residential journeyman
152 plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer
153 applies.

154 (f) A master electrician applicant shall produce satisfactory evidence that the applicant:

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

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

161 (iii) has four years of practical experience as a journeyman electrician; or

162 (iv) meets the qualifications determined by the board to be equivalent to Subsection
163 (3)(f)(i), (ii), or (iii).

164 (g) A master residential electrician applicant shall produce satisfactory evidence that
165 the applicant:

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

167 or

168 (ii) meets the qualifications determined by the board to be equivalent to this practical

169 experience.

170 (h) A journeyman electrician applicant shall produce satisfactory evidence that the
171 applicant:

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

175 (ii) has at least eight years of full-time experience approved by the division in
176 collaboration with the Electricians Licensing Board; or

177 (iii) meets the qualifications determined by the board to be equivalent to Subsection
178 (3)(h)(i) or (ii).

179 (i) A residential journeyman electrician applicant shall produce satisfactory evidence
180 that the applicant:

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

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

186 (iii) meets the qualifications determined by the division and applicable board to be
187 equivalent to Subsection (3)(i)(i) or (ii).

188 (j) The conduct of licensed apprentice electricians and their licensed supervisors shall
189 be in accordance with the following:

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

194 (ii) A licensed master, journeyman, residential master, or residential journeyman
195 electrician may have under immediate supervision on a residential project up to three licensed
196 apprentice electricians.

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

199 (k) An alarm company applicant shall:

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

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

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

205 (C) passes an examination component established by rule by the commission with the
206 concurrence of the director;

207 (ii) if a corporation, provide:

208 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
209 of all corporate officers, directors, and those responsible management personnel employed
210 within the state or having direct responsibility for managing operations of the applicant within
211 the state; and

212 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
213 of all shareholders owning 5% or more of the outstanding shares of the corporation, except this
214 shall not be required if the stock is publicly listed and traded;

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

216 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
217 of all company officers, and those responsible management personnel employed within the
218 state or having direct responsibility for managing operations of the applicant within the state;
219 and

220 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
221 of all individuals owning 5% or more of the equity of the company;

222 (iv) if a partnership, provide the names, addresses, dates of birth, Social Security
223 numbers, and fingerprint cards of all general partners, and those responsible management
224 personnel employed within the state or having direct responsibility for managing operations of

225 the applicant within the state;

226 (v) if a proprietorship, provide the names, addresses, dates of birth, Social Security
227 numbers, and fingerprint cards of the proprietor, and those responsible management personnel
228 employed within the state or having direct responsibility for managing operations of the
229 applicant within the state;

230 (vi) if a trust, provide the names, addresses, dates of birth, Social Security numbers,
231 and fingerprint cards of the trustee, and those responsible management personnel employed
232 within the state or having direct responsibility for managing operations of the applicant within
233 the state;

234 (vii) be of good moral character in that officers, directors, shareholders described in
235 Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel
236 have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other
237 crime that when considered with the duties and responsibilities of an alarm company is
238 considered by the board to indicate that the best interests of the public are served by granting
239 the applicant a license;

240 (viii) document that none of the applicant's officers, directors, shareholders described
241 in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management
242 personnel have been declared by any court of competent jurisdiction incompetent by reason of
243 mental defect or disease and not been restored;

244 (ix) document that none of the applicant's officers, directors, shareholders described in
245 Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are
246 currently suffering from habitual drunkenness or from drug addiction or dependence;

247 (x) file and maintain with the division evidence of:

248 (A) comprehensive general liability insurance in form and in amounts to be established
249 by rule by the commission with the concurrence of the director;

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

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

- 253 (I) Division of Corporations and Commercial Code;
- 254 (II) Unemployment Insurance Division in the Department of Workforce Services, for
- 255 purposes of Title 35A, Chapter 4, Employment Security Act;
- 256 (III) State Tax Commission; and
- 257 (IV) Internal Revenue Service; and
- 258 (xi) meet with the division and board.
- 259 (l) Each applicant for licensure as an alarm company agent shall:
- 260 (i) submit an application in a form prescribed by the division accompanied by
- 261 fingerprint cards;
- 262 (ii) pay a fee determined by the department under Section 63J-1-504;
- 263 (iii) be of good moral character in that the applicant has not been convicted of a felony,
- 264 a misdemeanor involving moral turpitude, or any other crime that when considered with the
- 265 duties and responsibilities of an alarm company agent is considered by the board to indicate
- 266 that the best interests of the public are served by granting the applicant a license;
- 267 (iv) not have been declared by any court of competent jurisdiction incompetent by
- 268 reason of mental defect or disease and not been restored;
- 269 (v) not be currently suffering from habitual drunkenness or from drug addiction or
- 270 dependence; and
- 271 (vi) meet with the division and board if requested by the division or the board.
- 272 (m) (i) Each applicant for licensure as an elevator mechanic shall:
- 273 (A) provide documentation of experience and education credits of not less than three
- 274 years work experience in the elevator industry, in construction, maintenance, or service and
- 275 repair; and
- 276 (B) satisfactorily complete a written examination administered by the division
- 277 established by rule under Section 58-1-203; or
- 278 (C) provide certificates of completion of an apprenticeship program for elevator
- 279 mechanics, having standards substantially equal to those of this chapter and registered with the
- 280 United States Department of Labor Bureau Apprenticeship and Training or a state

281 apprenticeship council.

282 (ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed
283 elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing,
284 repairing, or maintaining an elevator, the contractor may:

285 (I) notify the division of the unavailability of licensed personnel; and

286 (II) request the division issue a temporary elevator mechanic license to an individual
287 certified by the contractor as having an acceptable combination of documented experience and
288 education to perform the work described in this Subsection (3)(m)(ii)(A).

289 (B) (I) The division may issue a temporary elevator mechanic license to an individual
290 certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by
291 the appropriate fee as determined by the department under Section 63J-1-504.

292 (II) The division shall specify the time period for which the license is valid and may
293 renew the license for an additional time period upon its determination that a shortage of
294 licensed elevator mechanics continues to exist.

295 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
296 division may make rules establishing when Federal Bureau of Investigation records shall be
297 checked for applicants as an alarm company or alarm company agent.

298 (5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and
299 (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
300 Department of Public Safety with the division's request to:

301 (a) conduct a search of records of the Department of Public Safety for criminal history
302 information relating to each applicant for licensure as an alarm company or alarm company
303 agent and each applicant's officers, directors, shareholders described in Subsection
304 (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

305 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
306 requiring a check of records of the Federal Bureau of Investigation for criminal history
307 information under this section.

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

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

313 (b) the results of the Federal Bureau of Investigation review concerning an applicant in
314 a timely manner after receipt of information from the Federal Bureau of Investigation.

315 (7) (a) The division shall charge each applicant for licensure as an alarm company or
316 alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of
317 performing the records reviews under this section.

318 (b) The division shall pay the Department of Public Safety the costs of all records
319 reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the
320 costs of records reviews under this section.

321 (8) Information obtained by the division from the reviews of criminal history records of
322 the Department of Public Safety and the Federal Bureau of Investigation shall be used or
323 disseminated by the division only for the purpose of determining if an applicant for licensure as
324 an alarm company or alarm company agent is qualified for licensure.

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

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

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

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

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

336 (B) any owner or agent acting as a qualifier has served in any capacity listed in

337 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
338 this chapter, suspended or revoked within one year prior to the date of the applicant's
339 application[-]; or

340 (iv) (A) the applicant includes an individual who was an owner, director, or officer of
341 an unincorporated entity at the time the entity's license under this chapter was revoked; and

342 (B) the application for licensure is filed within 60 months after the revocation of the
343 unincorporated entity's license.

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

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

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

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

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

356 (B) any owner or agent acting as a qualifier has served in any capacity listed in

357 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
358 this chapter, suspended or revoked more than one year prior to the date of the applicant's
359 application.

360 (10) (a) (i) A licensee that is an unincorporated entity shall file an ownership status
361 report with the division every [90] 30 days after the day on which the license is issued if the
362 licensee has more than five owners who are individuals who:

363 (A) own an interest in the contractor that is an unincorporated entity;

364 (B) own, directly or indirectly, less than an 8% interest [~~in the unincorporated entity~~],

365 as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah
366 Administrative Rulemaking Act, in the unincorporated entity; and

367 (C) engage, or will engage, in a construction trade in [~~Utah~~] the state as [~~an owner~~]
368 owners of the contractor described in Subsection (10)(a)(i)(A).

369 (ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the
370 licensee shall provide the ownership status report with an application for renewal of licensure.

371 (b) An ownership status report required under this Subsection (10) shall:

372 (i) [~~list~~] specify each addition or deletion of an owner:

373 (A) for the first ownership status report, after the day on which the unincorporated
374 entity is licensed under this chapter; and

375 (B) for a subsequent ownership status report, after the day on which the previous
376 ownership status report is filed;

377 (ii) be in a format prescribed by the division that includes [~~the items on the list~~
378 provided under] for each owner, regardless of the owner's percentage ownership in the
379 unincorporated entity, the information described in Subsection(1)(e)(iv); [~~and~~]

380 (iii) list the name of:

381 (A) each officer or manager of the unincorporated entity; and

382 (B) each other individual involved in the operation, supervision, or management of the
383 unincorporated entity; and

384 [~~(iii)~~] (iv) be accompanied by a fee set by the division in accordance with Section
385 63J-1-504 if the ownership status report indicates there is a change described in Subsection
386 (10)(b)(i).

387 (c) The division may, at any time, audit an ownership status report under this
388 Subsection (10):

389 (i) to determine if financial responsibility has been demonstrated or maintained as
390 required under Section 58-55-306; and

391 (ii) to determine compliance with Subsection 58-55-501(24) [~~or~~], (25), or (27) or
392 Subsection 58-55-502(8) or (9).

393 (11) (a) An unincorporated entity that provides labor to an entity licensed under this
 394 chapter by providing an individual who owns an interest in the unincorporated entity to engage
 395 in a construction trade in Utah shall file with the division:

396 (i) before the individual who owns an interest in the unincorporated entity engages in a
 397 construction trade in Utah, a current list of the one or more individuals who hold an ownership
 398 interest in the unincorporated entity that includes for each individual:

399 (A) the individual's name, address, birthdate, and Social Security number; and

400 (B) whether the individual will engage in a construction trade; and

401 (ii) every ~~[90]~~ 30 days after the day on which the unincorporated entity provides the list
 402 described in Subsection (11)(a)(i), an ownership status report containing the information that
 403 would be required under Subsection (10) if the unincorporated entity were a licensed
 404 contractor.

405 (b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership
 406 status report described in Subsection (11)(a)(ii) or (iii) an unincorporated entity shall pay a fee
 407 set by the division in accordance with Section 63J-1-504.

408 (12) This chapter may not be interpreted to create or support an express or implied
 409 independent contractor relationship between an unincorporated entity described in Subsection
 410 (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax
 411 withholding.

412 (13) A Social Security number provided under Subsection (1)(e)(iv) is a private record
 413 under Subsection 63G-2-302(1)(h).

414 Section 2. Section **58-55-303** is amended to read:

415 **58-55-303. Term of license -- Expiration -- Renewal.**

416 (1) (a) Each license issued under this chapter shall be issued in accordance with a
 417 two-year renewal cycle established by rule.

418 (b) The division may by rule extend or shorten a renewal period by as much as one year
 419 to stagger the renewal cycle it administers.

420 (c) (i) Notwithstanding a renewal cycle under Subsection (1)(a) or (b), notwithstanding

421 Title 63G, Chapter 4, Administrative Procedures Act, and subject to Subsection (1)(c)(ii), a
422 license is automatically suspended 60 days after the licensee:

423 (A) becomes, after the time of licensing, an unincorporated entity that is subject to the
424 ownership status report filing requirements of Subsection 58-55-302(10)(a)(i); or

425 (B) transfers its license to an unincorporated entity that is subject to the ownership
426 status report filing requirements of Subsection 58-55-302(10)(a)(i).

427 (ii) An automatic suspension does not occur under Subsection (1)(c)(i) if, before the
428 expiration of the 60-day period in Subsection (1)(c)(i):

429 (A) the licensee submits an application for renewal of the license; and

430 (B) the division renews the licensee's license pursuant to the licensee's application for
431 renewal.

432 (iii) Within 30 days after the effective date of a suspension under Subsection (1)(c)(i),
433 the commission shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
434 make a final determination concerning the suspension.

435 (2) At the time of renewal, the licensee shall show satisfactory evidence of:

436 (a) continuing financial responsibility as required under Section 58-55-306;

437 (b) for a contractor licensee, completion of six hours of approved continuing education,
438 as required in Section 58-55-302.5; and

439 (c) if the licensee is an apprentice electrician or plumber, journeyman electrician or
440 plumber, master electrician or plumber, residential journeyman electrician or plumber, or
441 residential master electrician or plumber, completion of the number of hours of continuing
442 education specified under Section 58-55-302.7.

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

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

447 (5) In addition to any other requirements imposed by law, if a license has been
448 suspended or revoked for any reason, the applicant:

- 449 (a) shall pay in full all fines imposed by the division;
- 450 (b) resolve any outstanding citations or disciplinary actions with the division;
- 451 (c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution;
- 452 (d) complete a new financial responsibility review as required under Section
- 453 58-55-306, using only titled assets; and
- 454 (e) pay in full any reimbursement amount as provided in Title 38, Chapter 11,
- 455 Residence Lien Restriction and Lien Recovery Fund Act.

456 Section 3. Section **58-55-306** is amended to read:

457 **58-55-306. Financial responsibility.**

458 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or
459 reinstatement of a contractor's license shall demonstrate to the division and the commission the
460 applicant's or licensee's financial responsibility before the issuance of or the renewal or
461 reinstatement of a license by:

- 462 (a) (i) completing a questionnaire developed by the division; and
- 463 (ii) signing the questionnaire, certifying that the information provided is true and
- 464 accurate; or
- 465 (b) submitting a bond in an amount and form determined by the commission with the
- 466 concurrence of the director.

467 (2) A licensee, including an individual who holds an ownership interest in an
468 unincorporated entity licensee, shall maintain financial responsibility throughout the period of
469 licensure.

470 ~~[(2)]~~ (3) The division may audit ~~[an applicant's or licensee's demonstration of]~~ the
471 financial responsibility of an applicant or licensee on a random basis or upon finding of a
472 reasonable need.

473 ~~[(3)]~~ (4) The burden to demonstrate financial responsibility is upon the applicant ~~[or]~~,
474 licensee, or owner of an unincorporated entity licensee, as the case may be.

475 ~~[(4)(a) If an applicant for licensure as a contractor or a licensee applying for renewal~~
476 ~~or reinstatement of a contractor's license is an unincorporated entity, the division may require~~

477 each individual who holds an ownership interest in the applicant or licensee to demonstrate
478 financial responsibility to the division and the commission.]

479 ~~[(b) In accordance with Subsection (2), the division may audit an owner's~~
480 ~~demonstration of financial responsibility under Subsection (4)(a) at any time including~~
481 ~~requesting:]~~

482 ~~[(i) the applicant or licensee to provide a current list of owners meeting the~~
483 ~~requirements of Subsection 58-55-302(1)(c)(iv); and]~~

484 ~~[(ii) a credit report for each owner.]~~

485 ~~[(c) If an owner described in Subsection (4) (a) fails to demonstrate financial~~
486 ~~responsibility under this section, the division may:]~~

487 ~~[(i) prohibit the licensee or owner from engaging in a construction trade; or]~~

488 (5) (a) In determining the financial responsibility of an applicant or licensee described
489 in Subsection (1) that is an unincorporated entity, the division:

490 (i) shall consider the personal financial information of each individual who holds an
491 ownership interest in the unincorporated entity; and

492 (ii) may, at any time:

493 (A) audit the personal financial information of any individual who holds an ownership
494 interest in the unincorporated entity; or

495 (B) request and obtain a credit report on the individual.

496 (b) If, based on the personal financial information of one or more individuals who hold
497 an ownership interest in the unincorporated entity, the division determines that the applicant or
498 licensee lacks financial responsibility to engage successfully in business as a contractor, the
499 division may:

500 (i) prohibit the individual or individuals from engaging in a construction trade;

501 (ii) prohibit the applicant or licensee from engaging in a construction trade, unless the
502 individual or individuals dissociate from the applicant or licensee within 10 days after the
503 division makes the determination of a lack of financial responsibility; or

504 ~~[(ii)]~~ (iii) require the [owner] individual or individuals, applicant, or licensee to submit

505 a bond that is in a form determined by the commission with the concurrence of the director and
506 in an amount that is:

507 (A) [~~in an amount and form~~] determined by the commission with the concurrence of
508 the director[-]; or

509 (B) 20% of the annual gross distributions from the unincorporated entity to its owners
510 and that includes coverage for unpaid obligations incurred by the licensee contractor and any
511 failure of the licensee contractor owners to pay income taxes and self-employment taxes on the
512 gross distributions from the unincorporated entity to its owners.

513 Section 4. Section **58-55-310** is amended to read:

514 **58-55-310. Requirements when working for political subdivision or state agency.**

515 Each political subdivision and agency of the state and each board of education which
516 requires the issuance of a permit or license as a precondition to the construction, alteration,
517 improvement, demolition, or other repairs for which a contractor's license is also required
518 under this chapter shall:

519 (1) require that each applicant for a permit or license file a signed statement that the
520 applicant has a current contractor's license with the license number included in the application;

521 (2) require that any representation of exemption from the contractor's licensing law be
522 included in the signed statement and that if that exempt person, firm, corporation, association,
523 or other organization intends to hire a contractor to perform any work under the permit or
524 license, that the license number of that contractor be included in the application, but if a
525 contractor has not been selected at the time of the application for a permit or license, the permit
526 or license shall be issued only on the condition that a currently licensed contractor will be
527 selected and that the license number of the contractor will be given to the issuing public body
528 and displayed on the permit or license; [~~and~~]

529 (3) require that, upon issuance of a permit or license, the contractor affix the
530 contractor's license number to that permit or license for public display[-]; and

531 (4) require the contractor to provide proof that the contractor provides workers'
532 compensation insurance, pays into the unemployment insurance fund, provides health

533 insurance as required under federal or state law, and withholds applicable taxes from worker
534 pay.

535 Section 5. Section **58-55-501** is amended to read:

536 **58-55-501. Unlawful conduct.**

537 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 589 (f) reporting, notification, and filing laws of this state or the federal government;
- 590 (17) aiding or abetting any person in evading the provisions of this chapter or rules
- 591 established under the authority of the division to govern this chapter;
- 592 (18) engaging in the construction trade or as a contractor for the construction of
- 593 residences of up to two units when not currently registered or exempt from registration as a
- 594 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
- 595 Fund Act;
- 596 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
- 597 written contract the notification required in Section 38-11-108;
- 598 (20) wrongfully filing a preconstruction or construction lien in violation of Section
- 599 38-1a-308;
- 600 (21) if licensed as a contractor, not completing the approved continuing education
- 601 required under Section 58-55-302.5;
- 602 (22) an alarm company allowing an employee with a temporary license under Section
- 603 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
- 604 license, as provided in Subsection 58-55-312(3)(a)(ii);
- 605 (23) an alarm company agent under a temporary license under Section 58-55-312
- 606 engaging in conduct outside the scope of the temporary license, as provided in Subsection
- 607 58-55-312(3)(a)(ii);
- 608 (24) (a) an unincorporated entity licensed under this chapter having an individual who
- 609 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
- 610 lawfully present in the United States; or
- 611 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
- 612 providing an individual who owns an interest in the unincorporated entity to engage in a
- 613 construction trade in Utah while not lawfully present in the United States;
- 614 (25) an unincorporated entity failing to provide the following for an individual who
- 615 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
- 616 individual who engages, or will engage, in a construction trade in Utah for a separate entity for

617 which the unincorporated entity provides the individual as labor:

618 (a) workers' compensation coverage:

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

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

623 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
624 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
625 interest in the unincorporated entity, as defined by rule made by the division in accordance with
626 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; [or]

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

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

630 (i) the contractor uses; and

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

632 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
633 at a job site, whether or not the vehicle is owned by the contractor[-];

634 (27) (a) an unincorporated entity licensed under this chapter having an individual who
635 owns an interest in the unincorporated entity engage in a construction trade in the state while
636 the individual is using a Social Security number that does not belong to that individual; or

637 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
638 providing an individual, who owns an interest in the unincorporated entity, to engage in a
639 construction trade in the state while the individual is using a Social Security number that does
640 not belong to that individual; or

641 (28) a contractor failing to comply with a requirement imposed by a political
642 subdivision, state agency, or board of education under Section 58-55-310.

643 Section 6. Section **58-55-503** is amended to read:

644 **58-55-503. Penalty for unlawful conduct -- Citations.**

645 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
646 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), [~~or~~] (26), (27), or (28),
647 or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section
648 after it is final, is guilty of a class A misdemeanor.

649 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
650 individual and does not include a sole proprietorship, joint venture, corporation, limited
651 liability company, association, or organization of any type.

652 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
653 awarded and may not accept a contract for the performance of the work.

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

658 (3) Grounds for immediate suspension of the licensee's license by the division and the
659 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
660 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
661 report to, or notify the division with respect to any matter for which application, notification, or
662 reporting is required under this chapter or rules adopted under this chapter, including applying
663 to the division for a new license to engage in a new specialty classification or to do business
664 under a new form of organization or business structure, filing with the division current
665 financial statements, notifying the division concerning loss of insurance coverage, or change in
666 qualifier.

667 (4) (a) If upon inspection or investigation, the division concludes that a person has
668 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
669 (10), (12), (14), (19), (21), (22), (23), (24), (25), [~~or~~] (26), (27), or (28), or Subsection
670 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
671 action is appropriate, the director or the director's designee from within the division shall
672 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt

673 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
674 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

675 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
676 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), [or]
677 (26), (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a
678 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be
679 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered
680 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),
681 (9), (10), (12), (14), (19), (21), (24), (25), [or] (26), (27), or (28), or Subsection 58-55-504(2).

682 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
683 58-55-401 may not be assessed through a citation.

684 (b) (i) A citation shall be in writing and describe with particularity the nature of the
685 violation, including a reference to the provision of the chapter, rule, or order alleged to have
686 been violated.

687 (ii) A citation shall clearly state that the recipient must notify the division in writing
688 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
689 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

690 (iii) A citation shall clearly explain the consequences of failure to timely contest the
691 citation or to make payment of any fines assessed by the citation within the time specified in
692 the citation.

693 (c) A citation issued under this section, or a copy of a citation, may be served upon a
694 person upon whom a summons may be served:

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

696 (ii) personally or upon the person's agent by a division investigator or by a person
697 specially designated by the director; or

698 (iii) by mail.

699 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
700 citation was issued fails to request a hearing to contest the citation, the citation becomes the

701 final order of the division and is not subject to further agency review.

702 (ii) The period to contest a citation may be extended by the division for cause.

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

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

707 (g) A citation may not be issued under this section after the expiration of six months
708 following the occurrence of a violation.

709 (h) The director or the director's designee shall assess a fine in accordance with the
710 following:

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

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

713 and

714 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
715 \$2,000 for each day of continued offense.

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

718 (A) the division previously issued a final order determining that a person committed a
719 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
720 (3), (9), (10), (12), (14), (19), (24), (25), ~~(26)~~, (27), or (28), or Subsection 58-55-504(2); or

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

722 (II) a final order has not been issued by the division in the action initiated under
723 Subsection (4)(i)(i)(B)(I);

724 (III) the division determines during an investigation that occurred after the initiation of
725 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
726 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
727 (10), (12), (14), (19), (24), (25), ~~(26)~~, (27), or (28), or Subsection 58-55-504(2); and

728 (IV) after determining that the person committed a second or subsequent offense under

729 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
730 Subsection (4)(i)(i)(B)(I).

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

733 (j) In addition to any other licensure sanction or fine imposed under this section, the
734 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
735 two or more times within a 12-month period, unless, with respect to a violation of Subsection
736 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
737 legal working status of the individual who was the subject of the violation using a status
738 verification system, as defined in Section 13-47-102.

739 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
740 for each individual is considered a separate violation.

741 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
742 into the Commerce Service Account created by Section 13-1-2.

743 (b) A penalty that is not paid may be collected by the director by either referring the
744 matter to a collection agency or bringing an action in the district court of the county in which
745 the person against whom the penalty is imposed resides or in the county where the office of the
746 director is located.

747 (c) A county attorney or the attorney general of the state is to provide legal assistance
748 and advice to the director in any action to collect the penalty.

749 (d) In an action brought to enforce the provisions of this section, reasonable attorney
750 fees and costs shall be awarded.