

Representative Stephen D. Clark proposes the following substitute bill:

CONSTRUCTION SERVICES COMMISSION

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen D. Clark

This act modifies the Occupations and Professions Code. The act creates the Construction Services Commission within the Division of Occupational and Professional Licensing. The act provides that the commission serve as a policy board for the construction trades. The act sets forth the composition of the commission, the manner of appointment, qualifications, and terms of commission members, and the duties of the commission. ^h [~~Under the act, the Contractors Licensing Board members are the initial members of the commission and the Contractors Licensing Board becomes the commission.~~] ^h The act describes adjudicative proceedings. ^h [~~The act eliminates the requirement that a licensee business entity have a qualifier licensee if the business entity has maintained its license and not violated the requirements of this chapter and certain predecessor statutory provisions for ten consecutive years.~~]The act modifies the individual qualifier requirements. ^h The act makes technical changes.

15a The act provides an effective date.

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

AMENDS:

58-1-202, as renumbered and amended by Chapter 297, Laws of Utah 1993

58-1-203, as renumbered and amended by Chapter 297, Laws of Utah 1993

58-55-102, as last amended by Chapters 233 and 317, Laws of Utah 2000

58-55-201, as last amended by Chapter 317, Laws of Utah 2000

58-55-302, as last amended by Chapter 198, Laws of Utah 2001

58-55-304, as renumbered and amended by Chapter 181, Laws of Utah 1994

58-55-305, as last amended by Chapter 227, Laws of Utah 2001

58-55-306, as last amended by Chapter 233, Laws of Utah 2000



26 **58-55-307**, as renumbered and amended by Chapter 181, Laws of Utah 1994

27 **58-55-308**, as last amended by Chapter 317, Laws of Utah 2000

28 **58-55-503**, as last amended by Chapters 198 and 361, Laws of Utah 2001

29 ENACTS:

30 **58-55-103**, Utah Code Annotated 1953

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

32 Section 1. Section **58-1-202** is amended to read:

33 **58-1-202. Boards -- Duties, functions, and responsibilities.**

34 (1) The duties, functions, and responsibilities of each board include the following:

35 [~~1~~] (a) recommending to the director appropriate rules;

36 [~~2~~] (b) recommending to the director policy and budgetary matters;

37 [~~3~~] (c) approving and establishing a passing score for applicant examinations;

38 [~~4~~] (d) screening applicants and recommending licensing, renewal, reinstatement, and
39 relicensure actions to the director in writing;

40 [~~5~~] (e) assisting the director in establishing standards of supervision for students or
41 persons in training to become qualified to obtain a license in the occupation or profession it
42 represents; and

43 [~~6~~] (f) acting as presiding officer in conducting hearings associated with adjudicative
44 proceedings and in issuing recommended orders when so designated by the director.

45 (2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Construction
46 Trades Licensing.

47 Section 2. Section **58-1-203** is amended to read:

48 **58-1-203. Duties, functions, and responsibilities of division in collaboration with**
49 **board -- Construction Services Commission.**

50 (1) The following duties, functions, and responsibilities of the division shall be performed
51 by the division with the collaboration and assistance of the appropriate board:

52 [~~1~~] (a) defining which schools, colleges, universities, departments of universities, or
53 other institutions of learning are reputable and in good standing with the division;

54 [~~2~~] (b) prescribing license qualifications;

55 [~~3~~] (c) prescribing rules governing applications for licenses;

56 [~~4~~] (d) providing for a fair and impartial method of examination of applicants;

57 ~~[(5)]~~ (e) defining unprofessional conduct, by rule, to supplement the definitions under this
58 chapter or other licensing chapters;

59 ~~[(6)]~~ (f) establishing advisory peer committees to the board and prescribing their scope of
60 authority; and

61 ~~[(7)]~~ (g) establishing conditions for reinstatement and renewal of licenses.

62 (2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the
63 division outlined in Subsection (1) shall, instead, be performed by the Construction Services
64 Commission for all purposes of Title 58, Chapter 55, Construction Trades Licensing.

65 Section 3. Section **58-55-102** is amended to read:

66 **58-55-102. Definitions.**

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

68 (1) (a) "Alarm business or company" means a person engaged in the sale, installation,
69 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system.

70 (b) "Alarm business or company" does not include the activities of:

71 (i) a person engaged in the manufacture and sale of alarm systems when that person is not
72 engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring
73 of alarm systems, and the manufacture or sale occurs only at a place of business established by the
74 person engaged in the manufacture or sale and does not involve site visits at the place or intended
75 place of installation of an alarm system; or

76 (ii) an owner of an alarm system, or an employee of the owner of an alarm system who is
77 engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of
78 the alarm system owned by that owner.

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

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

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

83 or

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

85 (4) "Apprentice electrician" means a person licensed under this chapter as an apprentice
86 electrician who is learning the electrical trade under approved supervision of a master electrician,
87 residential master electrician, a journeyman electrician, or a residential journeyman electrician.

88 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice
89 plumber who is learning the plumbing trade under approved supervision of a journeyman plumber.

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

92 (7) "Board" means the [~~Contractors Licensing Board,~~] Electrician Licensing Board, Alarm
93 System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

94 (8) "Commission" means the Construction Services Commission created under Section
95 58-55-103.

96 [~~(8)~~] (9) "Construction trade" means any trade or occupation involving construction,
97 alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any
98 building, highway, road, railroad, dam, bridge, structure, excavation or other project, development,
99 or improvement to other than personal property.

100 [~~(9)~~] (10) "Construction trades instructor" means a person licensed under this chapter to
101 teach one or more construction trades in both a classroom and project environment, where a project
102 is intended for sale to or use by the public and is completed under the direction of an instructor
103 who has no economic interest in the project.

104 [~~(10)~~] (11) (a) "Contractor" means any person who for compensation other than wages as
105 an employee undertakes any work in the construction, plumbing, or electrical trade for which
106 licensure is required under this chapter and includes:

107 (i) a person who builds any structure on his own property for the purpose of sale or who
108 builds any structure intended for public use on his own property;

109 (ii) any person who represents himself to be a contractor by advertising or any other
110 means;

111 (iii) any person engaged as a maintenance person, other than an employee, who regularly
112 engages in activities set forth under the definition of "construction trade";

113 (iv) any person engaged in any construction trade for which licensure is required under this
114 chapter; or

115 (v) a construction manager who performs management and counseling services on a
116 construction project for a fee.

117 (b) "Contractor" does not include an alarm company or alarm company agent.

118 [~~(11)~~] (12) (a) "Electrical trade" means the performance of any electrical work involved

119 in the installation, construction, alteration, change, repair, removal, or maintenance of facilities,
120 buildings, or appendages or appurtenances.

121 (b) "Electrical trade" does not include:

122 (i) transporting or handling electrical materials;

123 (ii) preparing clearance for raceways for wiring; or

124 (iii) work commonly done by unskilled labor or any installations under the exclusive
125 control of electrical utilities.

126 (c) For purposes of Subsection (11)(b):

127 (i) no more than one unlicensed person may be so employed unless more than five licensed
128 electricians are employed by the shop; and

129 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted
130 by this Subsection (11)(c).

131 [~~(12)~~] (13) "Employee" means an individual as defined by the division by rule giving
132 consideration to the definition adopted by the Internal Revenue Service and the Department of
133 Workforce Services.

134 [~~(13)~~] (14) "Engage in a construction trade" means to:

135 (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in
136 a construction trade; or

137 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person to
138 believe one is or will act as a contractor.

139 [~~(14)~~] (15) "Financial responsibility" means a demonstration of a current and expected
140 future condition of financial solvency evidencing a reasonable expectation to the division and the
141 board that an applicant or licensee can successfully engage in business as a contractor without
142 jeopardy to the public health, safety, and welfare. Financial responsibility may be determined by
143 an evaluation of the total history concerning the licensee or applicant including past, present, and
144 expected condition and record of financial solvency and business conduct.

145 [~~(15)~~] (16) "General building contractor" means a person licensed under this chapter as a
146 general building contractor qualified by education, training, experience, and knowledge to perform
147 or superintend construction of structures for the support, shelter, and enclosure of persons, animals,
148 chattels, or movable property of any kind or any of the components of that construction except
149 plumbing, electrical, and mechanical, for which the general building contractor shall employ the

150 services of a contractor licensed in the particular specialty, except that a general building
151 contractor engaged in the construction of single-family and multifamily residences up to four units
152 may perform the mechanical and hire a licensed plumber or electrician as an employee. The
153 division may by rule exclude general building contractors from engaging in the performance of
154 other construction specialties in which there is represented a substantial risk to the public health,
155 safety, and welfare, and for which a license is required unless that general building contractor
156 holds a valid license in that specialty classification.

157 ~~[(16)]~~ (17) "General engineering contractor" means a person licensed under this chapter
158 as a general engineering contractor qualified by education, training, experience, and knowledge
159 to perform construction of fixed works in any or all of the following: irrigation, drainage, water,
160 power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels,
161 airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants
162 requiring specialized engineering knowledge and skill, piers, and foundations, or any of the
163 components of those works. However, a general engineering contractor may not perform
164 construction of structures built primarily for the support, shelter, and enclosure of persons,
165 animals, and chattels.

166 ~~[(17)]~~ (18) "Immediate supervision" means reasonable direction, oversight, inspection, and
167 evaluation of the work of a person, in or out of the immediate presence of the supervising person,
168 so as to ensure that the end result complies with applicable standards.

169 ~~[(18)]~~ (19) "Individual" means a natural person.

170 ~~[(19)]~~ (20) "Journeyman electrician" means a person licensed under this chapter as a
171 journeyman electrician having the qualifications, training, experience, and knowledge to wire,
172 install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

173 ~~[(20)]~~ (21) "Journeyman plumber" means a person licensed under this chapter as a
174 journeyman plumber having the qualifications, training, experience, and technical knowledge to
175 engage in the plumbing trade.

176 ~~[(21)]~~ (22) "Master electrician" means a person licensed under this chapter as a master
177 electrician having the qualifications, training, experience, and knowledge to properly plan, layout,
178 and supervise the wiring, installation, and repair of electrical apparatus and equipment for light,
179 heat, power, and other purposes.

180 ~~[(22)]~~ (23) "Person" means a natural person, sole proprietorship, joint venture, corporation,

181 limited liability company, association, or organization of any type.

182 ~~[(23)]~~ (24) "Plumbing trade" means the performance of any mechanical work pertaining
183 to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within
184 three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the
185 water supply, discharge of liquid and water carried waste, or the building drainage system within
186 the walls of the building. It includes that work pertaining to the water supply, distribution pipes,
187 fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains
188 together with their devices, appurtenances, and connections where installed within the outside
189 walls of the building.

190 ~~[(24)]~~ (25) "Ratio of apprentices" means, for the purpose of determining compliance with
191 the requirements for planned programs of training and electrician apprentice licensing applications,
192 the shop ratio of apprentice electricians to journeyman or master electricians shall be one
193 journeyman or master electrician to one apprentice on industrial and commercial work, and one
194 journeyman or master electrician to three apprentices on residential work. All on-the-job training
195 shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with
196 a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on
197 residential projects.

198 ~~[(25)]~~ (26) "Residential and small commercial contractor" means a person licensed under
199 this chapter as a residential and small commercial contractor qualified by education, training,
200 experience, and knowledge to perform or superintend the construction of single-family residences,
201 multifamily residences up to four units, and commercial construction of not more than three stories
202 above ground and not more than 20,000 square feet, or any of the components of that construction
203 except plumbing, electrical, and mechanical, for which the residential and small commercial
204 contractor shall employ the services of a contractor licensed in the particular specialty, except that
205 a residential and small commercial contractor engaged in the construction of single-family and
206 multifamily residences up to four units may perform the mechanical work and hire a licensed
207 plumber or electrician as an employee.

208 ~~[(26)]~~ (27) "Residential apprentice plumber" means a person licensed under this chapter
209 as a residential apprentice plumber who is learning the residential plumbing trade while working
210 on residential buildings under the approved supervision of a residential journeyman plumber or
211 a journeyman plumber.

212 ~~[(27)]~~ (28) "Residential building," as it relates to the license classification of residential
213 apprentice plumber and residential journeyman plumber, means a single or multiple family
214 dwelling of up to four units.

215 ~~[(28)]~~ (29) "Residential journeyman electrician" means a person licensed under this
216 chapter as a residential journeyman electrician having the qualifications, training, experience, and
217 knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and
218 other purposes on buildings using primarily nonmetallic sheath cable.

219 ~~[(29)]~~ (30) "Residential journeyman plumber" means a person licensed under this chapter
220 as a residential journeyman plumber having the qualifications, training, experience, and knowledge
221 to engage in the plumbing trade as limited to the plumbing of residential buildings.

222 ~~[(30)]~~ (31) "Residential master electrician" means a person licensed under this chapter as
223 a residential master electrician having the qualifications, training, experience, and knowledge to
224 properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and
225 equipment for light, heat, power, and other purposes on residential projects.

226 ~~[(31)]~~ (32) "Residential project," as it relates to an electrician or electrical contractor,
227 means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard
228 rules and regulations governing this work, including the National Electrical Code, and in which
229 the voltage does not exceed 250 volts line to line and 125 volts to ground.

230 ~~[(32)]~~ (33) "Specialty contractor" means a person licensed under this chapter under a
231 specialty contractor classification established by rule, who is qualified by education, training,
232 experience, and knowledge to perform those construction trades and crafts requiring specialized
233 skill the regulation of which are determined by the division to be in the best interest of the public
234 health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than
235 those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

236 ~~[(33)]~~ (34) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

237 ~~[(34)]~~ (35) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502
238 and as may be further defined by rule.

239 ~~[(35)]~~ (36) "Wages" means all amounts due an employee for labor or services whether the
240 amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the
241 amount.

242 Section 4. Section **58-55-103** is enacted to read:

243 **58-55-103. Construction Services Commission created -- Functions -- Appointment**
 244 **-- Qualifications and terms of members -- Expenses -- Meetings.**

245 (1) There is created within the division the Construction Services Commission. The
 246 commission shall:

247 (a) with the concurrence of the director, make reasonable rules under Title 63, Chapter
 248 46a, Utah Administrative Rulemaking Act, to administer and enforce this chapter which are
 249 consistent with this chapter including:

250 (i) licensing of various licensees;

251 (ii) approving and establishing a passing score for applicant examinations;

252 (iii) standards of supervision for students or persons in training to become qualified to
 253 obtain a license in the trade they represent; and

254 (iv) standards of conduct for various licensees;

255 (b) approve or disapprove fees adopted by the division under Section 63-38-3.2;

256 (c) except where the boards conduct them, conduct all administrative hearings not
 257 delegated to an administrative law judge relating to the licensing of any applicant;

258 (d) except as otherwise provided in Sections 38-11-207 and 58-55-503, with the
 259 concurrence of the director, impose sanctions against licensees and certificate holders with the
 260 same authority as the division under Section 58-1-401;

261 (e) advise the director on the administration and enforcement of any matters affecting the
 262 division and the construction industry;

263 (f) advise the director on matters affecting the division budget;

264 (g) advise and assist trade associations in conducting construction trade seminars and
 265 industry education and promotion; and

266 (h) perform other duties as provided by this chapter.

267 (2) Initially the commission shall be comprised of the ~~h~~ [seven] FIVE ~~h~~ members of the
 267a Contractors

268 Licensing Board ~~h~~ [whose] AND TWO OF THE THREE CHAIR PERSONS FROM THE PLUMBERS

268a LICENSING BOARD, THE ALARM SYSTEM SECURITY AND LICENSING BOARD, AND THE

268b ELECTRICIANS LICENSING BOARD. THE ~~h~~ terms of office ~~h~~ OF THE COMMISSION MEMBERS

268c WHO ARE SERVING ON THE CONTRACTORS LICENSING BOARD ~~h~~ shall continue as they serve on
 268d the commission. The

269 commission shall be comprised of seven members appointed by the executive director with the
 270 approval of the governor from the following groups:

271 (a) one member shall be a licensed general engineering contractor;

272 (b) one member shall be a licensed general building contractor;

273 (c) two members shall be licensed residential and small commercial contractors;

274 (d) two members shall be ~~h [licensed specialty contractors]~~ **TWO OF THE THREE CHAIR**
 274a **PERSONS FROM THE PLUMBERS LICENSING BOARD, THE ALARM SYSTEM SECURITY AND**
 274b **LICENSING BOARD, AND THE ELECTRICIANS LICENSING BOARD, WITH THE CONTINGENCY THAT**
 274c **THEY WILL ROTATE IN SUCCESSION EVERY TWO YEARS AMONG THE THREE CHAIR PERSONS h :**
 274d **and**

275 (e) one member shall be ~~h [a certified public accountant until the current term expires after~~
 276 ~~which this one member shall be from the general public]~~ **FROM THE GENERAL PUBLIC, PROVIDED,**
 276a **HOWEVER THAT THE CERTIFIED PUBLIC ACCOUNTANT ON THE CONTRACTORS LICENSING**
 276b **BOARD WILL CONTINUE TO SERVE UNTIL THE CURRENT TERM EXPIRES, AFTER WHICH THIS ONE**
 276c **MEMBER SHALL BE APPOINTED FROM THE GENERAL PUBLIC h .**

277 (3) (a) Except as required by Subsection (4)(b), as terms of current commission members
 278 expire, the governor shall appoint each new member or reappointed member to a four-year term
 279 ending June 30.

280 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time
 281 of appointment or reappointment, adjust the length of terms to stagger the terms of commission
 282 members so that approximately 1/2 of the commission members are appointed every two years.

283 (c) A commission member may not serve more than two consecutive terms.

284 (4) The commission shall elect annually one of its members as chair, for a term of one
 285 year.

286 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
 287 appointed for the unexpired term.

288 (6) (a) Members shall receive no compensation or benefits for their services, but may
 289 receive per diem and expenses incurred in the performance of the member's official duties at the
 290 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

291 (b) Members may decline to receive per diem and expenses for their service.

292 (7) The commission shall meet at least monthly unless the director determines otherwise.
 293 The director may call additional meetings at the director's discretion, upon the request of the chair,
 294 or upon the written request of three or more commission members.

295 (8) Four members constitute a quorum for the transaction of business. If a quorum is
 296 present when a vote is taken, the affirmative vote of commission members present is the act of the
 297 commission.

298 (9) The commission shall comply with the procedures and requirements of Title 13,
 299 Chapter 1, Department of Commerce, and Title 63, Chapter 46b, Administrative Procedures Act,
 300 in all of their adjudicative proceedings.

301 Section 5. Section **58-55-201** is amended to read:

302 **58-55-201. Board created -- Duties.**

303 (1) There is created [~~a Contractors Licensing Board,~~] a Plumbers Licensing Board, an
 304 Alarm System Security and Licensing Board, and an Electricians Licensing Board. Members of

305 the boards shall be selected to provide representation as follows:

306 ~~[(a) The Contractors Licensing Board consists of seven members as follows:]~~

307 ~~[(i) one member shall be a licensed general engineering contractor;]~~

308 ~~[(ii) one member shall be a licensed general building contractor;]~~

309 ~~[(iii) two members shall be licensed residential and small commercial contractors;]~~

310 ~~[(iv) two members shall be licensed specialty contractors; and]~~

311 ~~[(v) one member shall be a certified public accountant.]~~

312 ~~[(b)]~~ (a) The Plumbers Licensing Board consists of five members as follows:

313 (i) four members shall be licensed journeyman plumbers, of whom two shall be licensed
314 plumbing contractors; and

315 (ii) one member shall be from the public at large with no history of involvement in the
316 construction trades.

317 ~~[(c)]~~ (b) (i) The Alarm System Security and Licensing Board consists of five members as
318 follows:

319 (A) three individuals who are officers or owners of a licensed alarm business;

320 (B) one individual from among nominees of the Utah Peace Officers Association; and

321 (C) one individual representing the general public.

322 (ii) The Alarm System Security and Licensing Board shall designate one of its members
323 on a permanent or rotating basis to:

324 (A) assist the division in reviewing complaints concerning the unlawful or unprofessional
325 conduct of a licensee; and

326 (B) advise the division in its investigation of these complaints.

327 (iii) A board member who has, under Subsection (3), reviewed a complaint or advised in
328 its investigation is disqualified from participating with the board when the board serves as a
329 presiding officer in an adjudicative proceeding concerning the complaint.

330 ~~[(d)]~~ (c) The Electricians Licensing Board consists of five members as follows:

331 (i) two members shall be licensed from among the license classifications of master or
332 journeyman electrician, of whom one shall represent a union organization and one shall be selected
333 having no union affiliation;

334 (ii) two shall be licensed electrical contractors of whom one shall represent a union
335 organization and one shall be selected having no union affiliation; and

336 (iii) one member shall be from the public at large with no history of involvement in the
337 construction trades or union affiliation.

338 ~~[(2) The boards shall be appointed and serve in accordance with Section 58-1-201.]~~

339 ~~[(3) The duties and responsibilities of the boards shall be in accordance with Sections~~
340 ~~58-1-202 and 58-1-203.]~~

341 (2) The duties, functions, and responsibilities of each board include the following:

342 (a) recommending to the commission appropriate rules;

343 (b) recommending to the commission policy and budgetary matters;

344 (c) approving and establishing a passing score for applicant examinations;

345 (d) overseeing the screening of applicants for licensing, renewal, reinstatement, and
346 relicensure;

347 (e) assisting the commission in establishing standards of supervision for students or
348 persons in training to become qualified to obtain a license in the occupation or profession it
349 represents; and

350 (f) acting as presiding officer in conducting hearings associated with the adjudicative
351 proceedings and in issuing recommended orders when so authorized by the commission.

352 Section 6. Section **58-55-302** is amended to read:

353 **58-55-302. Qualifications for licensure.**

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

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

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

357 (c) (i) meet the examination requirements established by rule by the ~~[division in~~
358 ~~collaboration with the appropriate board]~~ commission with the concurrence of the director, except
359 for the classifications of apprentice plumber, residential apprentice plumber, and apprentice
360 electrician for whom no examination is required; or

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

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

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

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

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

370 (iii) be a licensed master electrician if an applicant for an electrical contractor's license or
371 a licensed master residential electrician if an applicant for a residential electrical contractor's
372 license; or

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

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

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

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

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

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

385 (i) Utah Department of Commerce;

386 (ii) Division of Corporations and Commercial Code;

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

389 (iv) State Tax Commission; and

390 (v) Internal Revenue Service.

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

393 (a) A journeyman plumber applicant shall produce satisfactory evidence of:

394 (i) [~~satisfactory evidence of~~] successful completion of the equivalent of at least four years
395 of full-time training and instruction as a licensed apprentice plumber under supervision of a
396 licensed journeyman plumber and in accordance with a planned program of training approved by
397 the division;

398 (ii) [~~satisfactory evidence of~~] at least eight years of full-time experience approved by the
399 division in collaboration with the Plumbers Licensing Board; or

400 (iii) satisfactory evidence of meeting the qualifications determined by the [~~division and~~]
401 board to be equivalent to Subsection (3)(a)(i) or (a)(ii).

402 (b) A residential journeyman plumber shall produce satisfactory evidence of [~~completion~~
403 ~~of~~]:

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

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

410 (iii) [~~satisfactory evidence of~~] meeting the qualifications determined by the [~~division and~~]
411 board to be equivalent to Subsection (3)(b)(i) or (b)(ii).

412 (c) A master electrician applicant shall produce satisfactory evidence that [~~he either~~] the
413 applicant:

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

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

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

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

424 (v) meets the qualifications determined by the [~~division and~~] board to be equivalent to
425 these qualifications.

426 (d) A master residential electrician applicant shall produce satisfactory evidence that [~~he~~]
427 the applicant:

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

429 or

430 (ii) meets the qualifications determined by the [~~division and~~] board to be equivalent to this
431 practical experience.

432 (e) A journeyman electrician applicant shall produce satisfactory evidence that [~~he either~~]
433 the applicant:

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

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

440 (iii) meets the qualifications determined by the [~~division and~~] board to be equivalent to
441 these qualifications.

442 (f) A residential journeyman electrician applicant shall produce satisfactory evidence that
443 [~~he~~] the applicant:

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

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

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

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

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

457 (ii) A licensed master, journeyman, residential master, or residential journeyman
458 electrician may have under [~~his~~] immediate supervision on a residential project up to three licensed
459 apprentice electricians.

460 (iii) A licensed master or journeyman electrician may have under [his] immediate
461 supervision on nonresidential projects only one licensed apprentice electrician.

462 (h) An alarm company applicant shall:

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

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

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

468 (C) passes an examination component established by rule by the [~~division in collaboration~~
469 ~~with the board~~] commission with the concurrence of the director;

470 (ii) if a corporation, provide:

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

474 (B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of
475 all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall
476 not be required if the stock is publicly listed and traded;

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

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

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

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

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

490 (vi) be of good moral character in that officers, directors, shareholders described in

491 Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have not
492 been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when
493 considered with the duties and responsibilities of an alarm company is considered by the [~~division~~
494 ~~and the~~] board to indicate that the best interests of the public are served by granting the applicant
495 a license;

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

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

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

504 (A) comprehensive general liability insurance in form and in amounts to be established
505 by rule by the [~~division in collaboration with the board~~] commission with the concurrence of the
506 director;

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

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

510 (I) Division of Corporations and Commercial Code;

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

513 (III) State Tax Commission; and

514 (IV) Internal Revenue Service; and

515 (x) meet with the division and board.

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

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

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

520 (iii) be of good moral character in that the applicant has not been convicted of a felony,
521 a misdemeanor involving moral turpitude, or any other crime that when considered with the duties

522 and responsibilities of an alarm company agent is considered by the [~~division and the~~] board to
523 indicate that the best interests of the public are served by granting the applicant a license;

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

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

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

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

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

535 (a) conduct a search of records of the Department of Public Safety for criminal history
536 information relating to each applicant for licensure as an alarm company or alarm company agent
537 and each applicant's officers, directors, [~~and~~] shareholders described in Subsection (3)(h)(ii)(B),
538 partners, proprietors, and responsible management personnel; and

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

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

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

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

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

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

553 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

587 Section 7. Section **58-55-304** is amended to read:

588 **58-55-304. Licensee names -- License number use -- License qualifier.**

589 (1) No license may be issued by the division in a name that is identical to or so resembles
590 the name of another licensee that the division determines that it may result in confusion or mistake.

591 (2) The contractor's license number shall be made a part of all permit applications,
592 contracts, agreements, or bids when a license is required.

593 (3) The division may issue a license in the name of an individual [~~person~~] or the name of
594 a business entity for which the individual [~~person~~] acts as a qualifier, in accordance with the
595 following:

596 (a) An individual shall:

597 (i) submit an application in [~~his~~] the individual's name;

598 (ii) demonstrate [~~his~~] the individual's own financial responsibility; and

599 (iii) pass the required examination and meet all other requirements of this chapter.

600 (b) A business entity shall:

601 (i) submit the application in the name of and on behalf of the business entity;

602 (ii) list the individual as the qualifier;

603 (iii) demonstrate financial responsibility of the business entity if applying for a contractor's
604 license;

605 (iv) provide evidence that the individual qualifier has passed the required examination; and

606 (v) meet all other requirements of this chapter.

607 (4) A person acting as a qualifier for a business entity licensee must demonstrate to the
608 division that [~~he~~] the individual is an owner, officer, or manager within that business entity who
609 exercises material authority in the conduct of that business entity's contracting business by:

610 (a) making substantive technical and administrative decisions relating to the work
611 performed for which a license is required under this chapter;

612 (b) hiring, promoting, transferring, laying off, disciplining, directing, or discharging
613 employees of the licensee either by himself or through others; and

614 (c) not being involved in any other employment or activity which conflicts with [~~his~~] the

615 individual's duties and responsibilities to ensure the licensee's performance of work regulated
616 under this chapter does not jeopardize the public health, safety, and welfare.

617 (5) ~~[H]~~ (a) Except as provided in Subsection (5)(b), it is the duty and responsibility of the
618 licensee and the qualifier to comply with the provisions of this section. Failure to comply with the
619 requirements of this section may be considered unprofessional conduct by the licensee, the
620 qualifier, or both.

621 (b) If a licensee business entity has maintained its license and has not violated the
622 requirements of this chapter or Sections 58-55-101 through 58-55-604 for a period of ten
623 consecutive years, the business entity may maintain its license under this chapter ~~h~~ [without having]
623a **BY RECORDING AN ACTIVE EMPLOYEE NAME AND REGISTRATION/LICENSE NUMBER FROM THE**
623b **APPLICABLE TRADE ON THE RENEWAL APPLICATION IN ORDER ~~h~~**
624 to comply with the individual qualifier requirements of this section. However, this Subsection
625 (5)(b) shall not apply if more than 50% of the ownership of the business entity has been transferred
626 at any time during the ten-year period.

627 (6) If an individual qualifying on behalf of a business entity issued a license under this
628 chapter ceases association with that entity as required in Subsection (4), the licensee shall notify
629 the division in writing within ten days after cessation of association or employment. If notice is
630 given, the license shall remain in force for 60 days after the date of cessation of association or
631 employment. The licensee shall replace the original qualifier with another individual qualifier
632 within the 60-day period or the license shall be automatically suspended.

633 (7) Failure to notify the division of cessation of association or employment of a qualifier
634 as required in Subsection (6) may result in immediate suspension of the license upon a finding of
635 good cause.

636 Section 8. Section **58-55-305** is amended to read:

637 **58-55-305. Exemptions from licensure.**

638 In addition to the exemptions from licensure in Section 58-1-307, the following persons
639 may engage in acts or practices included within the practice of construction trades subject to the
640 stated circumstances and limitations without being licensed under this chapter:

- 641 (1) an authorized representative of the United States government or an authorized
642 employee of the state or any of its political subdivisions when working on construction work of
643 the state or the subdivision, and when acting within the terms of his trust, office, or employment;
- 644 (2) a person engaged in construction or operation incidental to the construction and repair
645 of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts,

646 and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock
647 or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling,
648 hauling to and from construction sites, and lumbering;

649 (3) public utilities operating under the rules of the Public Service Commission on
650 construction work incidental to their own business;

651 (4) sole owners of property engaged in building:

652 (a) no more than one residential structure per year and no more than three residential
653 structures per five years on their property for their own noncommercial, nonpublic use; except, any
654 person, other than the property owner or individuals described in Subsection (5), who engages in
655 building the structure must be licensed under this chapter if he is otherwise required to be licensed
656 under this chapter; or

657 (b) structures on their property for their own noncommercial, nonpublic use which are
658 incidental to a residential structure on the property, including sheds, carports, or detached garages;

659 (5) (a) an individual engaged in construction or renovation of a residential building for
660 noncommercial, nonpublic use if that person:

661 (i) works without compensation other than token compensation that is not considered
662 salary or wages; and

663 (ii) works under the direction of the property owner who engages in building the structure;

664 (b) for purposes of this Subsection (5), "token compensation" means compensation paid
665 by a sole owner of property exempted from licensure under Subsection (4) to an individual
666 exempted from licensure under this Subsection (5), that is:

667 (i) minimal in value when compared with the fair market value of the services provided
668 by the individual;

669 (ii) not related to the fair market value of the services provided by the individual; and

670 (iii) is incidental to providing of services by the individual including paying for or
671 providing meals or refreshment while services are being provided, or paying reasonable
672 transportation costs incurred by the individual in travel to the site of construction;

673 (6) a person engaged in the sale or merchandising of personal property that by its design
674 or manufacture may be attached, installed, or otherwise affixed to real property who has contracted
675 with a person, firm, or corporation licensed under this chapter to install, affix, or attach that
676 property;

677 (7) a contractor submitting a bid on a federal aid highway project, if, before undertaking
678 any construction under that bid, the contractor is licensed under this chapter;

679 (8) (a) a person engaged in the alteration, repair, remodeling, or addition to or
680 improvement of any building with a contracted or agreed value of less than \$1,000, including both
681 labor and materials, and including all changes or additions to the contracted or agreed upon work;

682 (b) notwithstanding Subsection (8)(a), work in the plumbing and electrical trades must be
683 performed by a licensed electrician or plumber except as otherwise provided in this section;

684 (9) a person practicing a specialty contractor classification or construction trade which is
685 not classified by rule by the director as significantly impacting the public's health, safety, and
686 welfare;

687 (10) owners and lessees of property and persons regularly employed for wages by owners
688 or lessees of property or their agents for the purpose of maintaining the property, are exempt from
689 this chapter when doing work upon the property;

690 (11) (a) a person engaged in minor plumbing work incidental to the replacement or repair
691 of a fixture or an appliance in a residential or small commercial building, or structure used for
692 agricultural use, as defined in Section 58-56-4, provided that no modification is made to existing
693 culinary water, soil, waste, or vent piping;

694 (b) except as provided in Subsection (5), installation for the first time of a fixture or an
695 appliance is not included in the exemption provided under Subsection (11)(a);

696 (12) a person who ordinarily would be subject to the plumber licensure requirements set
697 forth in this chapter when installing or repairing a water conditioner or other water treatment
698 apparatus if the conditioner or apparatus:

699 (a) meets the appropriate state construction codes or local plumbing standards; and

700 (b) is installed or repaired under the direction of a person authorized to do such work under
701 an appropriate specialty contractor license;

702 (13) a person who ordinarily would be subject to the electrician licensure requirements set
703 forth in this chapter when employed by or under contract with:

704 (a) railroad corporations, telephone corporations or their corporate affiliates, elevator
705 contractors or constructors, or street railway systems; or

706 (b) public service corporations, rural electrification associations, or municipal utilities who
707 generate, distribute, or sell electrical energy for light, heat, or power;

708 (14) a person involved in minor electrical work incidental to a mechanical or service
709 installation; and

710 (15) a student participating in construction trade education and training programs approved
711 by the ~~[division in collaboration with the board]~~ commission with the concurrence of the director
712 under the condition that:

713 (a) all work intended as a part of a finished product on which there would normally be an
714 inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building
715 inspector; and

716 (b) a licensed contractor obtains the necessary building permits.

717 Section 9. Section **58-55-306** is amended to read:

718 **58-55-306. Financial responsibility.**

719 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or
720 reinstatement of a contractor's license shall demonstrate to the division and the ~~[board]~~
721 commission the applicant's or licensee's financial responsibility before the issuance of or the
722 renewal or reinstatement of a license by:

723 (a) (i) completing a questionnaire developed by the division; and

724 (ii) signing the questionnaire, certifying that the information provided is true and accurate;

725 or

726 (b) submitting a bond in an amount and form determined by the ~~[division]~~ commission
727 with the concurrence of the director.

728 (2) The division may audit an applicant's or licensee's demonstration of financial
729 responsibility on a random basis or upon finding of a reasonable need.

730 (3) The burden to demonstrate financial responsibility is upon the applicant or licensee.

731 Section 10. Section **58-55-307** is amended to read:

732 **58-55-307. Confidentiality of records and reports.**

733 ~~[Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act,~~
734 ~~credit]~~

735 (1) Credit reports, financial statements, and other information submitted to the division
736 by or at the request and direction of an applicant or licensee for the purpose of supporting a
737 representation of financial responsibility ~~[are confidential and]~~ constitute protected records under
738 Title 63, Chapter 2, Government Records Access and Management Act.

739 (2) Notwithstanding Title 63, Chapter 2, Government Records Access and Management
740 Act, the records described in Subsection (1) are not open for public inspection and are not subject
741 to discovery in civil or administrative proceedings.

742 Section 11. Section **58-55-308** is amended to read:

743 **58-55-308. Scope of practice -- Rules.**

744 (1) The [~~division, in collaboration with the board~~] commission, with the concurrence of
745 the director, may adopt reasonable rules pursuant to Title 63, Chapter 46a, Utah Administrative
746 Rulemaking Act, to define and limit the scope of practice and operating standards of the
747 classifications and subclassifications licensed under this chapter in a manner consistent with
748 established practice in the relevant industry. The [~~division and the board~~] commission and the
749 director may limit the field and scope of operations of a licensee under this chapter in accordance
750 with the rules and the public health, safety, and welfare, based on the licensee's education, training,
751 experience, knowledge, and financial responsibility.

752 (2) This section does not prohibit a licensed specialty contractor from accepting and
753 entering into a contract involving the use of two or more crafts or trades if the performance of the
754 work in the crafts or trades, other than that in which [~~he~~] the contractor is licensed, is incidental
755 and supplemental to the work for which [~~he~~] the contractor is licensed.

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

757 **58-55-503. Penalty for unlawful conduct -- Citations.**

758 (1) Any person who violates Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10),
759 (12), (14), or (15), or who fails to comply with a citation issued under this section after it is final,
760 is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection
761 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

762 (2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an
763 infraction unless the violator did so with the intent to deprive the person to whom money is to be
764 paid of the money received, in which case the violator is guilty of theft, as classified in Section
765 76-6-412.

766 (3) Grounds for immediate suspension of the licensee's license by the division and the
767 [~~board~~] commission include the issuance of a citation for violation of Section 58-55-501 or the
768 failure by a licensee to make application to, report to, or notify the division with respect to any
769 matter for which application, notification, or reporting is required under this chapter or rules

770 adopted under this chapter, including applying to the division for a new license to engage in a new
771 specialty classification or to do business under a new form of organization or business structure,
772 filing with the division current financial statements, notifying the division concerning loss of
773 insurance coverage, or change in qualifier.

774 (4) (a) If upon inspection or investigation, the division concludes that a person has violated
775 the provisions of Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or any rule or order
776 issued with respect to these subsections, and that disciplinary action is appropriate, the director or
777 ~~[his]~~ the director's designee from within the division ~~[for each alternative respectively,]~~ shall[;]
778 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
779 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
780 proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

781 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3),
782 (9), (10), (12), (14), or (19), as evidenced by an uncontested citation, a stipulated settlement, or by
783 a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
784 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating
785 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), or (19).

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

788 (b) Each citation shall be in writing and describe with particularity the nature of the
789 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
790 violated. The citation shall clearly state that the recipient must notify the division in writing within
791 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
792 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
793 explain the consequences of failure to timely contest the citation or to make payment of any fines
794 assessed by the citation within the time specified in the citation.

795 (c) Each citation issued under this section, or a copy of each citation, may be served upon
796 any person upon whom a summons may be served;

797 (i) in accordance with the Utah Rules of Civil Procedure ~~[and may be made];~~

798 (ii) personally or upon ~~[his]~~ the person's agent by a division investigator or by any person
799 specially designated by the director; or

800 (iii) by mail.

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

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

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

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

811 (h) Fines shall be assessed by the director or [his] the director's designee according to the
812 following:

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

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

815 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
816 \$2,000 for each day of continued offense.

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

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

821 or

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

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

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

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

831 (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i),

832 the division shall comply with the requirements of this section.

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

841 Section 13. **Effective date.**

842 This act takes effect on July 1, 2002.