

1 **SECURITY PERSONNEL LICENSING ACT**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

6 **This act modifies the Security Personnel Licensing Act by creating a Security Personnel**
7 **Licensing Education and Enforcement Fund to educate and train licensees and the**
8 **general public and to help enforce the provisions of the Licensing Act. The act gives the**
9 **Division of Occupational and Professional Licensing authority to issue citations for**
10 **violations of the Licensing Act and assess fines for cited offenses. The act expands the**
11 **definition of unlawful conduct used in the Licensing Act.**

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

13 AMENDS:

14 **58-63-102**, as last amended by Chapter 271, Laws of Utah 2001

15 **58-63-501**, as last amended by Chapter 271, Laws of Utah 2001

16 ENACTS:

17 **58-63-103**, Utah Code Annotated 1953

18 **58-63-503**, Utah Code Annotated 1953

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

20 Section 1. Section **58-63-102** is amended to read:

21 **58-63-102. Definitions.**

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

23 (1) "Armed courier service" means a person engaged in business as a contract security
24 company who transports or offers to transport tangible personal property from one place or
25 point to another under the control of an armed security officer employed by that service.

26 (2) "Armed private security officer" means an individual:

27 (a) employed by a contract security company;



28 (b) whose primary duty is that of guarding personal or real property, or providing
29 protection or security to the life and well being of humans or animals; and

30 (c) who wears, carries, possesses, or has immediate access to a firearm at any time in
31 the performance of the individual's duties.

32 (3) "Armored car service" means a person engaged in business as a contract security
33 company who transports or offers to transport tangible personal property from one place or
34 point to another under the control of an armed or unarmed private security officer employed by
35 the company using a specially equipped motor vehicle offering a high degree of security.

36 (4) "Board" means the Security Services Licensing Board created in Section
37 58-63-201.

38 (5) "Contract security company" means a person engaged in business to provide
39 security or guard services to another person for the purpose of protecting tangible personal
40 property, real property, or the life and well being of human or animal life by assignment of
41 security officers employed by the company and the use of specialized resources, motor
42 vehicles, or equipment.

43 (6) "Fund" means the Security Personnel Licensing Education and Enforcement Fund
44 created in Section 58-63-103.

45 [~~6~~] (7) "Identification card" means a personal pocket or wallet size card issued by the
46 division to each security officer licensed under this chapter.

47 [~~7~~] (8) "Officer" means a president, vice president, secretary, treasurer, or other
48 officer of a corporation or limited liability company listed as an officer in the files with the
49 Division of Corporations and Commercial Code.

50 [~~8~~] (9) "Owner" means a proprietor or general partner of a proprietorship or
51 partnership.

52 [~~9~~] (10) "Peace officer" means a person who:

53 (a) is a certified peace officer as defined in Title 53, Chapter 6, Peace Officer Standards
54 and Training Act; and

55 (b) derives total or special law enforcement powers from, and is an employee of the
56 federal government, the state, or any political subdivision, agency, department, branch, or
57 service of either, of any municipality, or of any other unit of local government.

58 [~~10~~] (11) "Regular basis" means 20 or more hours per month.

59 ~~[(11)]~~ (12) (a) "Security officer" means an individual who:

60 (i) is employed by a contract security company securing, guarding, or otherwise
61 protecting tangible personal property, real property, or the life and well being of human or
62 animal life against:

63 (A) trespass or other unlawful intrusion or entry;

64 (B) larceny;

65 (C) vandalism or other abuse;

66 (D) arson or any other criminal activity; or

67 (E) personal injury caused by another person or as a result of acts or omissions by
68 another person;

69 (ii) is controlling, regulating, or directing the flow of movements of individuals or
70 vehicles; or

71 (iii) providing street patrol service.

72 (b) "Security officer" does not include an individual whose duties are limited to
73 custodial or other services even though the presence of that individual may act to provide some
74 of the services set forth under Subsection ~~[(11)]~~ (12)(a).

75 ~~[(12)]~~ (13) "Security system" means equipment, devices, or instruments installed for
76 the purpose of:

77 (a) detecting and signaling entry or intrusion by some individual into or onto, or exit
78 from the premises protected by the system; or

79 (b) signaling the commission of a robbery or other criminal activity at the election of
80 an individual having control of the features of the security system.

81 ~~[(13)]~~ (14) "Street patrol service" means a person engaged in business as a contract
82 security company who provides patrols by means of foot, vehicle, or other method of
83 transportation using public streets, thoroughfares, or property in the performance of their duties
84 and responsibilities.

85 ~~[(14)]~~ (15) "Unarmed private security officer" means an individual:

86 (a) employed by a contract security company;

87 (b) whose primary duty is that of guarding personal or real property, or providing
88 protection or security to the life and well being of humans or animals;

89 (c) who never wears, carries, possesses, or has immediate access to a firearm at any

90 time in the performance of his duties; and

91 (d) who wears clothing of distinctive design or fashion bearing any symbol, badge,
92 emblem, insignia, or other device that identifies or tends to identify the wearer as a security
93 officer.

94 [~~(15)~~] (16) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-63-501.

95 [~~(16)~~] (17) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-63-502
96 and as may be further defined by rule.

97 Section 2. Section **58-63-103** is enacted to read:

98 **58-63-103. Security Personnel Licensing Education and Enforcement Fund.**

99 (1) There is created a restricted special revenue fund known as the Security Personnel
100 Licensing Education and Enforcement Fund.

101 (2) The fund consists of monies from fines collected under Section 58-63-503.

102 (3) The fund shall earn interest and the interest earned on fund monies shall be
103 deposited into the fund.

104 (4) The director may, with the concurrence of the board, make distributions from the
105 fund for the following purposes:

106 (a) educating and training licensees under this chapter;

107 (b) educating and training the general public or other interested persons in matters
108 concerning the laws that govern the practices licensed under this chapter; and

109 (c) enforcing this chapter by:

110 (i) investigating unprofessional or unlawful conduct; and

111 (ii) providing legal representation to the division when it takes legal action against a
112 person charged with unprofessional or unlawful conduct.

113 (5) The division shall make an annual report on the fund to the appropriate
114 appropriations subcommittee of the Legislature.

115 Section 3. Section **58-63-501** is amended to read:

116 **58-63-501. Unlawful conduct.**

117 "Unlawful conduct" includes:

118 (1) employing as a contract security company the services of an unlicensed armed
119 private security officer or unarmed private security officer, except as provided under Section
120 58-63-304 or 58-63-310; [~~and~~]

121 (2) filing with the division fingerprint cards for an applicant which are not those of the
122 applicant, or are in any other way false or fraudulent and intended to mislead the division in its
123 consideration of the qualifications of the applicant for licensure[-]; and

124 (3) practicing or engaging in, or attempting to practice or engage in activity for which a
125 license is required under this chapter, unless the individual:

126 (a) holds the appropriate license under this chapter; or

127 (b) is exempted from licensure as provided under Section 58-63-304 or 58-63-310.

128 Section 4. Section **58-63-503** is enacted to read:

129 **58-63-503. Penalties.**

130 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful
131 conduct under Section 58-63-501 or who fails to comply with a citation issued under this
132 section after it becomes final is guilty of a class A misdemeanor.

133 (2) The division may immediately suspend a license issued under this chapter of a
134 person who is given a citation for violating Subsection 58-63-501(1) or (3).

135 (3) (a) If upon inspection or investigation, the division determines that a person has
136 violated Subsection 58-63-501(1) or (3) or any rule made or order issued under those
137 subsections, and that disciplinary action is warranted, the director or the director's designee
138 within the division shall promptly issue a citation to the person and:

139 (i) attempt to negotiate a stipulated settlement; or

140 (ii) notify the person to appear for an adjudicative proceeding conducted under Title
141 63, Chapter 46b, Administrative Procedures Act.

142 (b) (i) The division may fine a person who is in violation of Subsection 58-63-501(1)
143 or (3), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a
144 violation in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to
145 cease and desist from the violation, or do both.

146 (ii) Except for a cease and desist order, the division may not impose the licensure
147 sanctions listed in Section 58-63-401 through the issuance of a citation under this section.

148 (c) The citation shall:

149 (i) be in writing and describe the nature of the violation, including a reference to the
150 statute, rule, or order alleged to have been violated;

151 (ii) state the recipient must notify the division in writing within 20 calendar days of

152 issuance of the citation if the recipient wants to contest the citation at the adjudicative
153 proceeding referred to in Subsection (3)(a)(ii); and

154 (iii) explain the consequences of failure to timely contest the citation or to make
155 payment of any fines assessed under the citation with the time specified in the citation.

156 (d) (i) A citation issued under this section, or a copy of the citation, may be served
157 upon any person upon whom a summons may be served under the Utah Rules of Civil
158 Procedure.

159 (ii) The individual may be served personally or service may be made upon the
160 individual's agent, and in either case the service can be made by a division investigator, by a
161 person designated by the director, or by mail.

162 (e) (i) If within 20 days from the service of a citation the person to whom the citation
163 was issued fails to request a hearing to contest the citation, the citation becomes the final order
164 of the division and is not subject to further agency review.

165 (ii) The division may grant an extension of the 20-day period for cause.

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

168 (g) The division may not issue a citation for an alleged violation under this section
169 after the expiration of six months following the occurrence of the alleged violation.

170 (h) The director or the director's designee may assess fines under this section as
171 follows:

172 (i) for a first offense under Subsection (3)(a), a fine of up to \$1,000;

173 (ii) for a second offense under Subsection (3)(a), a fine of up to \$2,000; and

174 (iii) for any subsequent offense under Subsection (3)(a), a fine of up to \$2,000 for each
175 day of continued violation.

176 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
177 Subsection (3)(h), an offense is a second or subsequent offense if:

178 (A) the division previously issued a final order determining that a person committed a
179 first or second offense in violation of Subsection 58-63-501(1) or (3); or

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

181 (II) no final order has been issued by the division in an action initiated under
182 Subsection (3)(i)(i)(B)(I);

183 (III) the division determines during an investigation that occurred after the initiation of
184 the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent
185 violation of Subsection 58-63-501(1) or (3); and

186 (IV) after determining that the person committed a second or subsequent offense under
187 Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under
188 Subsection (3)(i)(i)(B)(I).

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

191 (4) (a) A fine imposed by the director under Subsection (3)(h) shall be deposited into
192 the Security Personnel Licensing Education and Enforcement Fund.

193 (b) The director may collect a Subsection (3)(h) fine which is not paid by:

194 (i) referring the matter to a collection agency; or

195 (ii) bringing an action in the district court of the county in which the person resides or
196 in the county where the office of the director is located.

197 (c) The director may seek legal assistance from the attorney general or the county or
198 district attorney of the district in which the action is brought to collect the fine.

199 (d) The court shall award reasonable attorney's fees and costs to the division for
200 successful actions under Subsection (4)(b)(ii).

Legislative Review Note
as of 11-13-02 11:02 AM

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

Office of Legislative Research and General Counsel

State Impact

This bill creates a restricted special revenue fund called the Security Education and Enforcement Fund. It gives the Division of Occupational and Professional Licensing authority to issue citations for violations and the revenue is deposited in the fund. Based on past activity, there will be about 35 citations annually generating about \$12,200 in fines.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Restricted Funds	\$12,200	\$12,200	\$12,200	\$12,200
TOTAL	\$12,200	\$12,200	\$12,200	\$12,200

Individual and Business Impact

No fiscal impact except businesses that violate the section will pay the fines.
