

LIABILITY INSURANCE FOR CONTRACTORS**- MONITORING SYSTEM**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE**General Description:**

This bill enacts the Licensure Requirements and Standards Compliance Database Program and modifies related provisions of the Utah Construction Trades Licensing Act.

Highlighted Provisions:

This bill:

- ▶ requires insurers who issue liability insurance to contractors, burglar alarm companies, and contract security companies to provide a record of the policy to the Division of Occupational and Professional Licensing's designated agent;
- ▶ creates the Licensure Requirements and Standards Compliance Database Program to verify compliance with state licensure requirements and standards;
- ▶ provides for suspension or revocation of licensure;
- ▶ provides criteria for the disclosure of information in the database and establishes a penalty for unlawful disclosure;
- ▶ modifies qualifications for licensures;
- ▶ includes failing to obtain and continuously maintain comprehensive general liability insurance as unprofessional conduct;
- ▶ provides that monetary penalties for violations of construction trades licensing shall be deposited in the General Fund as a dedicated credit; and
- ▶ expands the purposes for which the monetary penalties may be used to include



administration of the Licensure Requirements and Standards Compliance Database Program.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-302, as last amended by Chapter 241, Laws of Utah 2002

58-55-303, as last amended by Chapter 198, Laws of Utah 2001

58-55-502, as last amended by Chapter 198, Laws of Utah 2001

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

58-63-103, as enacted by Chapter 308, Laws of Utah 2003

ENACTS:

31A-22-205, Utah Code Annotated 1953

58-1-601, Utah Code Annotated 1953

58-1-602, Utah Code Annotated 1953

58-1-603, Utah Code Annotated 1953

58-1-604, Utah Code Annotated 1953

58-1-605, Utah Code Annotated 1953

58-55-104, Utah Code Annotated 1953

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

Section 1. Section **31A-22-205** is enacted to read:

31A-22-205. DOPL liability insurance reporting requirements -- Penalty.

(1) (a) Each insurer that issues a policy that includes comprehensive general liability coverage for the following licensees licensed under Title 58 shall, before the seventh day of each calendar month, provide to the Division of Occupational and Professional Licensing's designated agent selected in accordance with Title 58, Chapter 1, Part 6, Licensure Requirements and Standards Compliance Database Program, a record of each insurance policy in effect for licensees in Utah as of the previous month that was issued by the insurer:

(i) contractors licensed under Chapter 55;

(ii) burglar alarm companies licensed under Chapter 55; and

(iii) contract security companies licensed under Chapter 63.

(b) This Subsection (1) does not preclude more frequent reporting.

(2) The record shall include:

(a) the name, date of birth, and social security number of each individual licensee or the name and federal identification number of each person, and the address of the named insured and other required identity information as prescribed by division rule;

(b) the policy number, effective date, and expiration date of each policy; and

(c) other information as defined by rule of the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, such as coverage amounts or types of coverage.

(3) Each insurer shall provide this information on magnetic tape or in another form the division's designated agent agrees to accept.

(4) (a) The commissioner may, following procedures set forth in Title 63, Chapter 46b, Administrative Procedures Act, assess a fine against an insurer of up to \$250 for each day the insurer fails to comply with this section.

(b) A fine collected under this section shall be deposited into the General Fund as a dedicated credit to be used by the division for the purposes listed in Section 58-55-104.

(c) If an insurer shows that the failure to comply with this section was inadvertent, accidental, or the result of excusable neglect, the commissioner may excuse the fine.

Section 2. Section **58-1-601** is enacted to read:

Part 6. Licensure Requirements and Standards Compliance Database Program
58-1-601. Title.

This part is known as the "Licensure Requirements and Standards Compliance Database Program."

Section 3. Section **58-1-602** is enacted to read:

58-1-602. Definitions.

As used in this part:

(1) "Database" means the Licensure Requirements and Standards Compliance Database created in Section 58-1-603.

(2) "Designated agent" means the third party the division contracts with under Section 58-1-603.

(3) "Program" means the Licensure Requirements and Standards Compliance Database Program created in Section 58-1-603.

Section 4. Section **58-1-603** is enacted to read:

58-1-603. Program creation -- Administration -- Selection of designated agent -- Duties -- Rulemaking -- Audits.

(1) There is created the Licensure Requirements and Standards Compliance Database Program to:

(a) establish a database to verify compliance with licensure requirements and standards under this title as created and maintained by the division's designated agent;

(b) continuously monitor compliance with licensure requirements and standards;

(c) assist in increasing compliance with licensure requirements and standards; and

(d) assist in protecting public health, safety, and welfare and promote a fair working environment.

(2) The division shall administer the program with the assistance of the designated agent.

(3) The division shall contract in accordance with Title 63, Chapter 56, Utah Procurement Code, with a third party to establish and maintain a Licensure Requirements and Standards Compliance Database for the purposes established under this part.

(4) (a) The third party under contract under this section is the division's designated agent.

(b) The designated agent shall develop and maintain a computer database from the information provided by:

(i) insurers under Section 31A-22-205; and

(ii) the division under Subsection (5).

(c) The division shall establish guidelines for the development and maintenance of the database.

(5) With information provided by the division, the designated agent shall, at least monthly:

(a) update the database with the information provided by any other agency or entity

required or allowed by statute to provide information; and

(b) compare the database with the information provided.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules and develop procedures for the purpose of administering and enforcing this part.

(7) (a) The designated agent shall archive computer data files at least semi-annually for auditing purposes.

(b) The division may audit the designated agent's administration of the database as considered necessary.

Section 5. Section **58-1-604** is enacted to read:

58-1-604. Notice -- Proof -- Suspension and Revocation of licensure -- Penalties -- Exemptions.

Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act:

(1) the designated agent shall:

(a) if the comparison under Section 58-1-603 shows that a licensee is out of compliance with licensure requirements or standards for a time period determined by rule, provide notice to the licensee:

(i) that the licensee has 20 calendar days or other time period as established by rule to provide evidence of compliance or exemption from compliance; and

(ii) that failure to provide the evidence will result in automatic suspension of licensure; and

(b) if a licensee fails to provide satisfactory evidence of compliance to the designated agent, provide a second notice to the licensee notifying the licensee:

(i) that the licensee has one year or other period of time as established by rule, to establish compliance and submit a reinstatement application; and

(ii) that if the licensee does not establish compliance and submit a reinstatement application within the time specified, the licensee's license shall be automatically revoked without further notice.

(2) The division:

(a) shall suspend a license upon receiving notification from the designated agent that the licensee failed to provide evidence under the notice specified in Subsection (1)(a);

(b) shall revoke a suspended license if the licensee fails to timely reinstate the license as specified in Subsection (1)(b); and

(c) may direct the designated agent to provide the notices under this section.

(3) An action by the division to suspend or revoke a license under this section does not restrict other action by law enforcement or any other agency to impose any penalties allowed by law.

(4) Upon direction from the division, the designated agent shall include in the notices specified in this section notification that the licensee may be out of compliance with any other statutory or regulatory requirements.

Section 6. Section **58-1-605** is enacted to read:

58-1-605. Disclosure of licensure requirements or standards -- Penalty.

(1) (a) Information in the database established under Section 58-1-603 provided by a person to the designated agent is considered to be the property of the person providing the information.

(b) The information may not be disclosed from the database under Title 63, Chapter 2, Government Records Access and Management Act, or otherwise, except as follows:

(i) for the purpose of investigating, litigating, or enforcing licensure requirements or standards under this title;

(ii) for the purpose of investigating, litigating, or enforcing licensure requirements or standards under this title, the designated agent shall, upon request, issue to any state or local government agency or court a certificate documenting the licensure requirements or standards information, according to the database, of a specific licensee for the time period designated by the government agency;

(iii) upon request, the division or its designated agent shall disclose whether or not a licensee is in compliance with specified licensure requirements or standards documented in the database, and any additional information specified by rule to:

(A) the licensee or, if the licensee is deceased, any interested person of the licensee, as defined in Section 75-1-201;

(B) the parent or legal guardian of the licensee, if the licensee is an unemancipated minor;

(C) the legal guardian of the licensee if the licensee is legally incapacitated;

183 (D) a person who has power of attorney from the licensee;

184 (E) a person who submits a notarized release from the licensee dated no more than 90
185 days before the date the request is made; or

186 (F) a person suffering loss or injury who certifies under penalty of perjury that the
187 licensee was involved in the loss or injury and that the loss or injury was related to the
188 licensee's practice under this title;

189 (iv) for the purpose of investigating, enforcing, or prosecuting laws or issuing citations
190 by federal, state, or local law enforcement agencies related to licensure requirements or
191 standards;

192 (v) upon request of a peace officer acting in an official capacity under Subsection
193 (1)(b)(iv), the division or the designated agent shall disclose relevant information for
194 investigation, enforcement, or prosecution;

195 (vi) for the purpose of the state auditor, the legislative auditor general, or other auditor
196 of the state conducting audits of the program; and

197 (vii) any other person, agency, or entity, as defined by rule, whose need for access to
198 the information in the database is determined to be greater than the privacy interests of the
199 licensee.

200 (2) (a) The division may allow the designated agent to prepare and deliver upon request
201 of a person, entity, or agency entitled to the information under Subsection (1), a report in the
202 form of:

203 (i) a certified copy that is considered admissible in any court proceeding in the same
204 manner as the original; or

205 (ii) information accessible through the Internet or through other electronic medium if
206 the division determines that sufficient security is provided to safeguard the privacy interests of
207 the parties involved.

208 (b) The division or its designated agent, if allowed by the department, may charge a fee
209 established by the department under Section 63-38-3.2 for each:

210 (i) document authenticated, including each certified copy; and

211 (ii) record accessed by the Internet or by other electronic medium.

212 (c) The division shall deposit any fee collected under Subsection (2)(b) into the
213 General Fund as a dedicated credit to be used by the division for the purposes listed in Section

58-55-104.

(3) Any person who knowingly releases or discloses information from the database for a purpose other than those authorized in this section or to a person who is not entitled to it is guilty of a third degree felony.

(4) Any person, agency, or entity required by law to report information to the designated agent is not subject to liability for providing that information.

(5) Neither the state nor the division's designated agent is liable to any person for gathering, managing, or using the information in the database.

Section 7. Section **58-55-104** is enacted to read:

58-55-104. Use of funding for education, training, enforcement, investigations, and a database.

(1) The director may, with the concurrence of the commission, use the monies collected under Section 58-55-503 for the following purposes:

(a) enforcing this chapter by:

(i) investigating unprofessional or unlawful conduct; and

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

(b) educating and training licensees under this chapter;

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

(d) funding the activities of the division's designated agent under Title 58, Chapter 1, Part 6, with respect to persons licensed under this chapter.

(2) Funding used for the purposes listed in Subsection (1) is nonlapsing.

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

58-55-302. Qualifications for licensure.

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

(a) submit an application prescribed by the division;

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

(c) submit proof of registration, if required, with the Division of Corporations and Commercial Code;

(d) obtain and maintain a policy of comprehensive general liability insurance in an

amount determined by rule, immediately upon receipt of an active license and, continuously thereafter, unless the license is placed on inactive status;

~~[(e)]~~ (e) (i) meet the examination requirements established by rule by the commission with the concurrence of the director, except for the classifications of apprentice plumber, residential apprentice plumber, and apprentice electrician for whom no examination is required; or

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

~~[(d)]~~ (f) if an apprentice, identify the proposed supervisor of the apprenticeship;

~~[(e)]~~ (g) if an applicant for a contractor's license:

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

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

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

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

~~[(f)]~~ (h) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

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

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

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

~~[(c) proof of registration as required by applicable law with the:]~~

[~~(i) Utah Department of Commerce;~~]

[~~(ii) Division of Corporations and Commercial Code;~~]

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

[~~(iv) State Tax Commission; and~~]

[~~(v) Internal Revenue Service.~~]

[~~(3)~~] (2) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

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

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

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

(iii) satisfactory evidence of meeting the qualifications determined by the board to be equivalent to Subsection [~~(3)~~] (2)(a)(i) or (a)(ii).

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

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

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

(iii) meeting the qualifications determined by the board to be equivalent to Subsection [~~(3)~~] (2)(b)(i) or (b)(ii).

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

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

(ii) is a graduate of an electrical trade school, having received an associate of applied

sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

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

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

(v) meets the qualifications determined by the board to be equivalent to these qualifications.

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

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

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

(e) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:

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

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

(iii) meets the qualifications determined by the board to be equivalent to these qualifications.

(f) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:

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

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master,

journeyman, residential master, or residential journeyman electrician; or

(iii) meets the qualifications determined by the division and applicable board to be equivalent to Subsection ~~[(3)]~~ (2)(f)(i) or (f)(ii).

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

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

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

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

(h) An alarm company applicant shall:

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

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

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

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

(ii) if a corporation, provide:

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

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

(iii) if a limited liability company, provide:

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

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

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

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

(vi) be of good moral character in that officers, directors, shareholders described in Subsection ~~[(3)]~~ (2)(h)(ii)(B), partners, proprietors, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(vii) document that none of the applicant's officers, directors, shareholders described in Subsection ~~[(3)]~~ (2)(h)(ii)(B), partners, proprietors, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection ~~[(3)]~~ (2)(h)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(ix) file and maintain with the division evidence of ~~[:]~~ registration as is required by applicable law with the Division of Corporations and Commercial Code; and

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

400 ~~[(B) workers' compensation insurance that covers employees of the applicant in~~
401 ~~accordance with applicable Utah law; and]~~

402 ~~[(C) registration as is required by applicable law with the:]~~

403 ~~[(F) Division of Corporations and Commercial Code;]~~

404 ~~[(H) Division of Workforce Information and Payment Services in the Department of~~
405 ~~Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;]~~

406 ~~[(HH) State Tax Commission; and]~~

407 ~~[(IV) Internal Revenue Service; and]~~

408 (x) meet with the division and board.

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

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

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

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

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

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

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

422 ~~[(4)]~~ (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
423 Act, the division may make rules establishing when Federal Bureau of Investigation records
424 shall be checked for applicants as an alarm company or alarm company agent.

425 ~~[(5)]~~ (4) To determine if an applicant meets the qualifications of Subsections ~~[(3)]~~
426 ~~(2)(h)(vi)~~ and ~~[(3)]~~ (2)(i)(iii), the division shall provide an appropriate number of copies of
427 fingerprint cards to the Department of Public Safety with the division's request to:

428 (a) conduct a search of records of the Department of Public Safety for criminal history
429 information relating to each applicant for licensure as an alarm company or alarm company
430 agent and each applicant's officers, directors, shareholders described in Subsection ~~[(3)]~~

(2)(h)(ii)(B), partners, proprietors, and responsible management personnel; and

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

~~[(6)]~~ (5) The Department of Public Safety shall send to the division:

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

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

~~[(7)]~~ (6) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63-38-3.2, equal to the cost of performing the records reviews under this section.

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

~~[(8)]~~ (7) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

~~[(9)]~~ (8) (a) An application for licensure under this chapter shall be denied if:

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

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

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

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

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection ~~[(9)]~~ (8)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application.

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

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

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

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

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

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection ~~[(9)]~~ (8)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application.

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

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

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

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

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

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

(4) The requirements of Subsection 58-55-302~~[(9)]~~(8) shall also apply to applicants

seeking to renew or reinstate a license.

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

(a) pay in full all fines imposed by the division[;];

(b) resolve any outstanding citations or disciplinary actions with the division[;];

(c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution[;];

(d) complete a new financial responsibility review as required under Section 58-55-306, using only titled assets[;]; and

(e) pay in full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

Section 10. Section **58-55-502** is amended to read:

58-55-502. Unprofessional conduct.

Unprofessional conduct includes:

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

(2) disregarding or violating [~~through gross negligence or a pattern of negligence~~]:

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

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

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

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

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

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

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

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

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

terms;

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

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

(d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;

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

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

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

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

(7) failing to comply with operating standards established by rule in accordance with Section 58-55-308[-]; or

(8) failing to obtain and continuously maintain a policy of comprehensive general liability insurance as required in Subsection 58-55-302(1)(d).

Section 11. Section **58-55-503** is amended to read:

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

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

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

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

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

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

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

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

(ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act.

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

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

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

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

(iii) by mail.

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

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

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

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

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

(h) ~~[Fines shall be assessed by the]~~ The director or the director's designee shall assess fines according to the following:

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

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

and

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

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

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

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

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

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

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

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

(5) (a) ~~[Any]~~ A monetary penalty imposed by the director under Subsection (4) (h) shall be deposited into the ~~[Commerce Service Fund. Any]~~ General Fund as a dedicated credit to be used by the division for the purposes listed in Section 58-55-104.

(b) A penalty which is not paid may be collected by the director by either referring the matter to the Office of Debt Collection, a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. ~~[Any]~~

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

(d) In any action brought to enforce ~~[the provisions of]~~ this section, reasonable attorney's fees and costs shall be awarded.

Section 12. Section **58-63-103** is amended to read:

58-63-103. Use of funding for education, training, enforcement, investigations and a database.

(1) The director may, with the concurrence of the board, use the monies collected under Section 58-63-503 for the following purposes:

648 (a) educating and training licensees under this chapter;
649 (b) educating and training the general public or other interested persons in matters
650 concerning the laws that govern the practices licensed under this chapter; ~~[and]~~
651 (c) enforcing this chapter by:
652 (i) investigating unprofessional or unlawful conduct; and
653 (ii) providing legal representation to the division when it takes legal action against a
654 person charged with unprofessional or unlawful conduct~~[-]; and~~
655 (d) funding the activities of the division's designated agent under Title 58, Chapter 1,
656 Part 6, Licensure Requirements and Standards Compliance Database Program, with respect to
657 persons licensed under this chapter.
658 (2) ~~[The monies collected under Section 58-63-503 and]~~ Funding used for the purposes
659 listed in Subsection (1) ~~[are]~~ is nonlapsing.

Legislative Review Note
as of 12-22-03 8:38 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0173

Liability Insurance for Contractors-Monitoring System 06-Feb-04
10:37 AM

State Impact

This bill will divert \$25,000 in fine revenue from the General Fund to Dedicated Credits for the purposes of the bill. These funds are non-lapsing.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$0	\$0	(\$25,000)	(\$25,000)
Dedicated Credits Revenue	\$25,000	\$25,000	\$25,000	\$25,000
TOTAL	\$25,000	\$25,000	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst