

RESIDENCE LIEN RECOVERY FUND

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen D. Clark

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

38-11-303, Utah Code Annotated 1953



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

135 (iii) by mail.

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

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

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

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

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

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

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

150 and

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

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

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

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

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

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

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

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

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

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

Legislative Review Note

as of 2-9-04 10:46 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0298

Residence Lien Recovery Fund Amendments

12-Feb-04

10:05 AM

State Impact

No fiscal impact.

Individual and Business Impact

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

Office of the Legislative Fiscal Analyst