

Representative J. Stuart Adams proposes the following substitute bill:

REGULATION OF CONSTRUCTION INDUSTRY

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill transfers the regulation and administration of contractor related regulation from the Division of Occupations and Professional Licensing to the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ addresses the Division of Real Estate's authority related to liens;
- ▶ directs the Division of Real Estate to oversee the construction notice registry;
- ▶ requires the Division of Real Estate to administer the Residence Lien Restriction and Lien Recovery Fund Act;
- ▶ transfers the licensure and regulation of the construction trade industry to the Division of Real Estate including the following provisions:
 - amends definitions;
 - amends language related to the Construction Services Commission;
 - establishes adjudication proceeding requirements;
 - amends provisions related to licensing boards;
 - establishes application process for licensing and notification requirements;
 - addresses the terms of licensure and provides renewal procedures;
 - provides exemptions from licensure to certain persons;



26 • provides the division with access to Bureau of Criminal Identification records;
27 • provides for licensure by endorsement;
28 • provides for the division issuing temporary or restricted licenses, and adopting
29 rules permitting inactive licenses;

30 • requires written agreement for the voluntary surrender of a license;
31 • amends provisions relating to denial of licensure and disciplinary proceedings;
32 • establishes procedures for administrative review and creates special appeals
33 boards;

34 • provides for suspensions;
35 • establishes a diversion program in disciplinary matters;
36 • amends the definitions of unlawful and unprofessional conduct;
37 • establishes a maximum civil penalty;
38 • requires the division to comply with court-ordered discipline; and
39 • amends payment provisions relating to contractors, subcontractors, and
40 suppliers;

41 ▶ transfers the administration of the Utah Uniform Building Standards Act to the
42 Division of Real Estate and includes the following provisions:

43 • amends definitions; and
44 • amends provisions relating to appointment and responsibilities of the Building
45 Inspector Licensing Board and the collaboration between the division and the
46 board;

47 ▶ provides access to the Division of Real Estate of an index to expunged records; and
48 ▶ makes conforming and technical amendments.

49 **Monies Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill takes effect on July 1, 2006.

53 This bill provides coordination clauses.

54 **Utah Code Sections Affected:**

55 AMENDS:

56 **9-4-102**, as last amended by Chapter 18, Laws of Utah 2004

57 **10-9-106.5**, as last amended by Chapter 253, Laws of Utah 2001
58 **11-36-102**, as last amended by Chapter 239, Laws of Utah 2002
59 **13-8-5**, as last amended by Chapter 9, Laws of Utah 2001
60 **17-27-105.5**, as last amended by Chapter 253, Laws of Utah 2001
61 **19-5-121**, as enacted by Chapter 274, Laws of Utah 2001
62 **26-15-3**, as last amended by Chapter 218, Laws of Utah 1995
63 **26A-1-113**, as last amended by Chapter 249, Laws of Utah 2002
64 **26A-1-114**, as last amended by Chapter 171, Laws of Utah 2003
65 **35A-4-303**, as last amended by Chapter 21, Laws of Utah 2004
66 **38-1-7 (Effective 05/01/05)**, as last amended by Chapters 85 and 250, Laws of Utah
67 2004
68 **38-1-11**, as last amended by Chapters 42, 85 and 188, Laws of Utah 2004
69 **38-1-27 (Effective 05/01/05)**, as repealed and reenacted by Chapter 250, Laws of Utah
70 2004
71 **38-11-102**, as last amended by Chapters 42 and 85, Laws of Utah 2004
72 **38-11-103**, as last amended by Chapter 172, Laws of Utah 1995
73 **38-11-204**, as last amended by Chapter 42, Laws of Utah 2004
74 **38-11-207**, as last amended by Chapter 198, Laws of Utah 2001
75 **38-11-301**, as last amended by Chapter 198, Laws of Utah 2001
76 **38-11-302**, as last amended by Chapters 20 and 172, Laws of Utah 1995
77 **57-23-4**, as enacted by Chapter 262, Laws of Utah 1991
78 **58-1-202**, as last amended by Chapter 241, Laws of Utah 2002
79 **58-1-203**, as last amended by Chapter 241, Laws of Utah 2002
80 **58-1-301.5**, as enacted by Chapter 214, Laws of Utah 2002
81 **58-3a-102**, as enacted by Chapter 260, Laws of Utah 1996
82 **58-3a-602**, as enacted by Chapter 260, Laws of Utah 1996
83 **58-22-102**, as last amended by Chapter 259, Laws of Utah 1996
84 **58-22-602**, as enacted by Chapter 259, Laws of Utah 1996
85 **58-53-304**, as renumbered and amended by Chapter 191, Laws of Utah 1998
86 **58-53-602**, as enacted by Chapter 191, Laws of Utah 1998
87 **59-12-102**, as last amended by Chapters 1, 156, 255, 298 and 300, Laws of Utah 2004

- 88 **63-2-302**, as last amended by Chapters 90 and 173, Laws of Utah 2004
- 89 **63-38-3.2**, as last amended by Chapter 16, Laws of Utah 2003
- 90 **63-46b-1**, as last amended by Chapter 235, Laws of Utah 2004
- 91 **63A-5-206**, as last amended by Chapters 216 and 231, Laws of Utah 2000
- 92 **70D-1-19**, as last amended by Chapter 75, Laws of Utah 2004
- 93 **77-18-15**, as last amended by Chapter 227, Laws of Utah 1999

94 ENACTS:

- 95 **61-2e-104**, Utah Code Annotated 1953
- 96 **61-2e-312**, Utah Code Annotated 1953
- 97 **61-2e-313**, Utah Code Annotated 1953
- 98 **61-2e-314**, Utah Code Annotated 1953
- 99 **61-2e-315**, Utah Code Annotated 1953
- 100 **61-2e-316**, Utah Code Annotated 1953
- 101 **61-2e-317**, Utah Code Annotated 1953
- 102 **61-2e-404**, Utah Code Annotated 1953
- 103 **61-2e-405**, Utah Code Annotated 1953
- 104 **61-2e-406**, Utah Code Annotated 1953
- 105 **61-2e-504**, Utah Code Annotated 1953
- 106 **61-2e-505**, Utah Code Annotated 1953

107 RENUMBERS AND AMENDS:

- 108 **61-2e-101**, (Renumbered from 58-55-101, as renumbered and amended by Chapter 181,
109 Laws of Utah 1994)
- 110 **61-2e-102**, (Renumbered from 58-55-102, as last amended by Chapters 39 and 75,
111 Laws of Utah 2004)
- 112 **61-2e-103**, (Renumbered from 58-55-103, as last amended by Chapters 61 and 90,
113 Laws of Utah 2004)
- 114 **61-2e-201**, (Renumbered from 58-55-201, as last amended by Chapter 241, Laws of
115 Utah 2002)
- 116 **61-2e-301**, (Renumbered from 58-55-301, as last amended by Chapter 317, Laws of
117 Utah 2000)
- 118 **61-2e-302**, (Renumbered from 58-55-302, as last amended by Chapters 90 and 236,

119 Laws of Utah 2004)
120 **61-2e-303**, (Renumbered from 58-55-303, as last amended by Chapter 198, Laws of
121 Utah 2001)
122 **61-2e-304**, (Renumbered from 58-55-304, as last amended by Chapter 14, Laws of
123 Utah 2004)
124 **61-2e-305**, (Renumbered from 58-55-305, as last amended by Chapters 39 and 191,
125 Laws of Utah 2004)
126 **61-2e-306**, (Renumbered from 58-55-306, as last amended by Chapter 241, Laws of
127 Utah 2002)
128 **61-2e-307**, (Renumbered from 58-55-307, as last amended by Chapter 241, Laws of
129 Utah 2002)
130 **61-2e-308**, (Renumbered from 58-55-308, as last amended by Chapter 39, Laws of
131 Utah 2004)
132 **61-2e-309**, (Renumbered from 58-55-310, as renumbered and amended by Chapter 181,
133 Laws of Utah 1994)
134 **61-2e-310**, (Renumbered from 58-55-311, as renumbered and amended by Chapter 317,
135 Laws of Utah 2000)
136 **61-2e-311**, (Renumbered from 58-55-312, as renumbered and amended by Chapter 317,
137 Laws of Utah 2000)
138 **61-2e-401**, (Renumbered from 58-55-401, as renumbered and amended by Chapters
139 181 and 308, Laws of Utah 1994)
140 **61-2e-402**, (Renumbered from 58-55-402, as last amended by Chapters 233 and 317,
141 Laws of Utah 2000)
142 **61-2e-403**, (Renumbered from 58-55-403, as last amended by Chapter 233, Laws of
143 Utah 2000)
144 **61-2e-501 (Effective 07/01/05)**, (Renumbered from 58-55-501 (Effective 07/01/05), as
145 last amended by Chapter 45, Laws of Utah 2004)
146 **61-2e-502**, (Renumbered from 58-55-502, as last amended by Chapter 198, Laws of
147 Utah 2001)
148 **61-2e-503 (Effective 07/01/05)**, (Renumbered from 58-55-503 (Effective 07/01/05), as
149 last amended by Chapter 45, Laws of Utah 2004)

- 150 **61-2e-601**, (Renumbered from 58-55-601, as renumbered and amended by Chapter 181,
151 Laws of Utah 1994)
- 152 **61-2e-602**, (Renumbered from 58-55-602, as last amended by Chapter 365, Laws of
153 Utah 1999)
- 154 **61-2e-603**, (Renumbered from 58-55-603, as renumbered and amended by Chapter 181,
155 Laws of Utah 1994)
- 156 **61-2e-604**, (Renumbered from 58-55-604, as renumbered and amended by Chapter 181,
157 Laws of Utah 1994)
- 158 **61-2f-101**, (Renumbered from 58-56-1, as enacted by Chapter 269, Laws of Utah 1989)
- 159 **61-2f-102**, (Renumbered from 58-56-2, as enacted by Chapter 269, Laws of Utah 1989)
- 160 **61-2f-103**, (Renumbered from 58-56-3, as last amended by Chapter 75, Laws of Utah
161 2004)
- 162 **61-2f-104**, (Renumbered from 58-56-5, as last amended by Chapter 75, Laws of Utah
163 2002)
- 164 **61-2f-201**, (Renumbered from 58-56-4, as last amended by Chapters 75 and 110, Laws
165 of Utah 2004)
- 166 **61-2f-202**, (Renumbered from 58-56-6, as last amended by Chapter 75, Laws of Utah
167 2002)
- 168 **61-2f-203**, (Renumbered from 58-56-7, as last amended by Chapter 75, Laws of Utah
169 2002)
- 170 **61-2f-204**, (Renumbered from 58-56-8, as last amended by Chapter 75, Laws of Utah
171 2002)
- 172 **61-2f-205**, (Renumbered from 58-56-11, as last amended by Chapter 196, Laws of Utah
173 1997)
- 174 **61-2f-206**, (Renumbered from 58-56-12, as last amended by Chapter 75, Laws of Utah
175 2004)
- 176 **61-2f-207**, (Renumbered from 58-56-13, as enacted by Chapter 293, Laws of Utah
177 1990)
- 178 **61-2f-208**, (Renumbered from 58-56-14, as enacted by Chapter 293, Laws of Utah
179 1990)
- 180 **61-2f-209**, (Renumbered from 58-56-15, as last amended by Chapter 75, Laws of Utah

- 181 2004)
- 182 **61-2f-210**, (Renumbered from 58-56-16, as last amended by Chapter 42, Laws of Utah
- 183 1999)
- 184 **61-2f-211**, (Renumbered from 58-56-17, as last amended by Chapter 229, Laws of Utah
- 185 2003)
- 186 **61-2f-212**, (Renumbered from 58-56-17.5, as enacted by Chapter 385, Laws of Utah
- 187 1997)
- 188 **61-2f-301**, (Renumbered from 58-56-8.5, as enacted by Chapter 262, Laws of Utah
- 189 1995)
- 190 **61-2f-302**, (Renumbered from 58-56-9, as last amended by Chapter 75, Laws of Utah
- 191 2002)

192 **Uncodified Material Affected:**

193 ENACTS UNCODIFIED MATERIAL

194

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

196 Section 1. Section **9-4-102** is amended to read:

197 **9-4-102. Definitions.**

198 As used in this chapter:

199 (1) "Accessible housing" means housing which has been constructed or modified to be
200 accessible, as described in the construction codes adopted under Section [~~58-56-4~~] 61-2f-201.

201 (2) "Director" means the director of the division.

202 (3) "Division" means the Division of Housing and Community Development.

203 Section 2. Section **10-9-106.5** is amended to read:

204 **10-9-106.5. Manufactured homes.**

205 (1) For purposes of this section, a manufactured home is the same as defined in Section
206 [~~58-56-3~~] 61-2f-103, except that the manufactured home must be attached to a permanent
207 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and
208 frost protection in compliance with the applicable building code. All appendages, including
209 carports, garages, storage buildings, additions, or alterations must be built in compliance with
210 the applicable building code.

211 (2) A manufactured home may not be excluded from any zone or area in which a

212 single-family residence would be permitted, provided the manufactured home complies with all
213 local zoning, building code, and subdivision requirements, including any restrictive covenants,
214 applicable to single family residence within that zone or area.

215 (3) A municipality may not:

216 (a) adopt or enforce an ordinance or regulation that treats a proposed development that
217 includes manufactured homes differently than one that does not include manufactured homes;
218 or

219 (b) reject a development plan based on the fact that the development is expected to
220 contain manufactured homes.

221 Section 3. Section **11-36-102** is amended to read:

222 **11-36-102. Definitions.**

223 As used in this chapter:

224 (1) "Building permit fee" means the fees charged to enforce the uniform codes adopted
225 pursuant to Title [58] 61, Chapter [56] 2f, Utah Uniform Building Standards Act, that are not
226 greater than the fees indicated in the appendix to the Uniform Building Code.

227 (2) "Capital facilities plan" means the plan required by Section 11-36-201.

228 (3) "Development activity" means any construction or expansion of a building,
229 structure, or use, any change in use of a building or structure, or any changes in the use of land
230 that creates additional demand and need for public facilities.

231 (4) "Development approval" means any written authorization from a local political
232 subdivision that authorizes the commencement of development activity.

233 (5) "Enactment" means:

234 (a) a municipal ordinance, for municipalities;

235 (b) a county ordinance, for counties; and

236 (c) a governing board resolution, for special districts.

237 (6) "Hookup fees" means reasonable fees, not in excess of the approximate average
238 costs to the political subdivision, for services provided for and directly attributable to the
239 connection to utility services, including gas, water, sewer, power, or other municipal, county,
240 or independent special district utility services.

241 (7) (a) "Impact fee" means a payment of money imposed upon development activity as
242 a condition of development approval.

243 (b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a
244 hookup fee, a fee for project improvements, or other reasonable permit or application fee.

245 (8) (a) "Local political subdivision" means a county, a municipality, or a special district
246 created under Title 17A, Special Districts.

247 (b) "Local political subdivision" does not mean school districts, whose impact fee
248 activity is governed by Section 53A-20-100.5.

249 (9) "Private entity" means an entity with private ownership that provides culinary water
250 that is required to be used as a condition of development.

251 (10) (a) "Project improvements" means site improvements and facilities that are:

252 (i) planned and designed to provide service for development resulting from a
253 development activity; and

254 (ii) necessary for the use and convenience of the occupants or users of development
255 resulting from a development activity.

256 (b) "Project improvements" does not mean system improvements.

257 (11) "Proportionate share" means the cost of public facility improvements that are
258 roughly proportionate and reasonably related to the service demands and needs of any
259 development activity.

260 (12) "Public facilities" means only the following capital facilities that have a life
261 expectancy of ten or more years and are owned or operated by or on behalf of a local political
262 subdivision or private entity:

263 (a) water rights and water supply, treatment, and distribution facilities;

264 (b) wastewater collection and treatment facilities;

265 (c) storm water, drainage, and flood control facilities;

266 (d) municipal power facilities;

267 (e) roadway facilities;

268 (f) parks, recreation facilities, open space, and trails; and

269 (g) public safety facilities.

270 (13) (a) "Public safety facility" means a building constructed or leased to house police,
271 fire, or other public safety entities.

272 (b) "Public safety facility" does not mean a jail, prison, or other place of involuntary
273 incarceration.

274 (14) (a) "Roadway facilities" means streets or roads that have been designated on an
275 officially adopted subdivision plat, roadway plan, or general plan of a political subdivision,
276 together with all necessary appurtenances.

277 (b) "Roadway facilities" includes associated improvements to federal or state roadways
278 only when the associated improvements:

279 (i) are necessitated by the new development; and

280 (ii) are not funded by the state or federal government.

281 (c) "Roadway facilities" does not mean federal or state roadways.

282 (15) (a) "Service area" means a geographic area designated by a local political
283 subdivision on the basis of sound planning or engineering principles in which a defined set of
284 public facilities provide service within the area.

285 (b) "Service area" may include the entire local political subdivision.

286 (16) (a) "System improvements" means:

287 (i) existing public facilities that are designed to provide services to service areas within
288 the community at large; and

289 (ii) future public facilities identified in a capital facilities plan that are intended to
290 provide services to service areas within the community at large.

291 (b) "System improvements" does not mean project improvements.

292 Section 4. Section 13-8-5 is amended to read:

293 **13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in**
294 **interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors --**
295 **Penalty -- No waiver.**

296 (1) As used in this section:

297 (a) (i) "Construction contract" means a written agreement between the parties relative
298 to the design, construction, alteration, repair, or maintenance of a building, structure, highway,
299 appurtenance, appliance, or other improvements to real property, including moving,
300 demolition, and excavating for nonresidential commercial or industrial construction projects.

301 (ii) If the construction contract is for construction of a project that is part residential
302 and part nonresidential, this section applies only to that portion of the construction project that
303 is nonresidential as determined pro rata based on the percentage of the total square footage of
304 the project that is nonresidential.

305 (b) "Construction lender" means any person, including a bank, trust company, savings
306 bank, industrial bank, land bank, safe deposit company, private banker, savings and loan
307 association, credit union, cooperative bank, small loan company, sales finance company,
308 investment company, or any other financial institution that advances monies to a borrower for
309 the purpose of making alterations or improvements to real property. A construction lender
310 does not include a person or entity who is acting in the capacity of contractor, original
311 contractor, or subcontractor.

312 (c) "Contractor" means a person who, for compensation other than wages as an
313 employee, undertakes any work in a construction trade, as defined in Section [~~58-55-102~~]
314 61-2e-102 and includes:

315 (i) any person engaged as a maintenance person who regularly engages in activities set
316 forth in Section [~~58-55-102~~] 61-2e-102 as a construction trade; or

317 (ii) a construction manager who performs management and counseling services on a
318 construction project for a fee.

319 (d) "Original contractor" is as provided in Section 38-1-2.

320 (e) "Owner" means the person who holds any legal or equitable title or interest in
321 property. Owner does not include a construction lender unless the construction lender has an
322 ownership interest in the property other than solely as a construction lender.

323 (f) "Public agency" means any state agency or political subdivision of the state that
324 enters into a construction contract for an improvement of public property.

325 (g) "Retention payment" means release of retention proceeds as defined in Subsection
326 (1)(h).

327 (h) "Retention proceeds" means monies earned by a contractor or subcontractor but
328 retained by the owner or public agency pursuant to the terms of a construction contract to
329 guarantee payment or performance by the contractor or subcontractor of the construction
330 contract.

331 (i) "Subcontractor" is as defined in Section 38-1-2.

332 (j) "Successful party" has the same meaning as it does under Section 38-1-18.

333 (2) (a) This section is applicable to all construction contracts relating to construction
334 work or improvements entered into on or after July 1, 1999, between:

335 (i) an owner or public agency and an original contractor;

- 336 (ii) an original contractor and a subcontractor; and
- 337 (iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).
- 338 (b) This section does not apply to a construction lender.
- 339 (3) (a) Notwithstanding Section [~~58-55-603~~] 61-2e-603, the retention proceeds
- 340 withheld and retained from any payment due under the terms of the construction contract may
- 341 not exceed 5% of the payment:
- 342 (i) by the owner or public agency to the original contractor;
- 343 (ii) by the original contractor to any subcontractor; or
- 344 (iii) by a subcontractor.
- 345 (b) The total retention proceeds withheld may not exceed 5% of the total construction
- 346 price.
- 347 (c) The percentage of the retention proceeds withheld and retained pursuant to a
- 348 construction contract between the original contractor and a subcontractor or between
- 349 subcontractors shall be the same retention percentage as between the owner and the original
- 350 contractor if:
- 351 (i) the retention percentage in the original construction contract between an owner and
- 352 the original contractor is less than 5%; or
- 353 (ii) after the original construction contract is executed but before completion of the
- 354 construction contract the retention percentage is reduced to less than 5%.
- 355 (4) (a) If any payment on a contract with a private contractor, firm, or corporation to do
- 356 work for an owner or public agency is retained or withheld by the owner or the public agency,
- 357 as retention proceeds, it shall be placed in an interest-bearing account.
- 358 (b) The interest accrued under Subsection (4)(a) shall be:
- 359 (i) for the benefit of the contractor and subcontractors; and
- 360 (ii) paid after the project is completed and accepted by the owner or the public agency.
- 361 (c) The contractor shall ensure that any interest accrued on the retainage is distributed
- 362 by the contractor to subcontractors on a pro rata basis.
- 363 (5) Any retention proceeds retained or withheld pursuant to this section and any
- 364 accrued interest shall be released pursuant to a billing statement from the contractor within 45
- 365 days from the later of:
- 366 (a) the date the owner or public agency receives the billing statement from the

367 contractor;

368 (b) the date that a certificate of occupancy or final acceptance notice is issued to:

369 (i) the original contractor who obtained the building permit from the building inspector
370 or public agency;

371 (ii) the owner or architect; or

372 (iii) the public agency;

373 (c) the date that a public agency or building inspector having authority to issue its own
374 certificate of occupancy does not issue the certificate but permits partial or complete occupancy
375 of a newly constructed or remodeled building; or

376 (d) the date the contractor accepts the final pay quantities.

377 (6) If only partial occupancy of a building is permitted, any retention proceeds withheld
378 and retained pursuant to this section and any accrued interest shall be partially released within
379 45 days under the same conditions as provided in Subsection (5) in direct proportion to the
380 value of the part of the building occupied.

381 (7) The billing statement from the contractor as provided in Subsection (5)(a) shall
382 include documentation of lien releases or waivers.

383 (8) (a) Notwithstanding Subsection (3):

384 (i) if a contractor or subcontractor is in default or breach of the terms and conditions of
385 the construction contract documents, plans, or specifications governing construction of the
386 project, the owner or public agency may withhold from payment for as long as reasonably
387 necessary an amount necessary to cure the breach or default of the contractor or subcontractor;
388 or

389 (ii) if a project or a portion of the project has been substantially completed, the owner
390 or public agency may retain until completion up to twice the fair market value of the work of
391 the original contractor or of any subcontractor that has not been completed:

392 (A) in accordance with the construction contract documents, plans, and specifications;

393 or

394 (B) in the absence of plans and specifications, to generally accepted craft standards.

395 (b) An owner or public agency that refuses payment under Subsection (8)(a) shall
396 describe in writing within 45 days of withholding such amounts what portion of the work was
397 not completed according to the standards specified in Subsection (8)(a).

398 (9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor
399 who receives retention proceeds shall pay each of its subcontractors from whom retention has
400 been withheld each subcontractor's share of the retention received within ten days from the day
401 that all or any portion of the retention proceeds is received:

402 (i) by the original contractor from the owner or public agency; or

403 (ii) by the subcontractor from:

404 (A) the original contractor; or

405 (B) a subcontractor.

406 (b) Notwithstanding Subsection (9)(a), if a retention payment received by the original
407 contractor is specifically designated for a particular subcontractor, payment of the retention
408 shall be made to the designated subcontractor.

409 (10) (a) In any action for the collection of the retained proceeds withheld and retained
410 in violation of this section, the successful party is entitled to:

411 (i) attorney's fees; and

412 (ii) other allowable costs.

413 (b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly
414 and wrongfully withholds a retention shall be subject to a charge of 2% per month on the
415 improperly withheld amount, in addition to any interest otherwise due.

416 (ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or
417 subcontractor from whom the retention proceeds have been wrongfully withheld.

418 (11) A party to a construction contract may not require any other party to waive any
419 provision of this section.

420 Section 5. Section **17-27-105.5** is amended to read:

421 **17-27-105.5. Manufactured homes.**

422 (1) For purposes of this section, a manufactured home is the same as defined in Section
423 ~~[58-56-3]~~ 61-2f-103, except that the manufactured home must be attached to a permanent
424 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and
425 frost protection in compliance with the applicable building code. All appendages, including
426 carports, garages, storage buildings, additions, or alterations must be built in compliance with
427 the applicable building code.

428 (2) A manufactured home may not be excluded from any zone or area in which a

429 single-family residence would be permitted, provided the manufactured home complies with
430 all local zoning, building code, and subdivision requirements, including any restrictive
431 covenants, applicable to single-family residence within that zone or area.

432 (3) A county may not:

433 (a) adopt or enforce an ordinance or regulation that treats a proposed development that
434 includes manufactured homes differently than one that does not include manufactured homes;
435 or

436 (b) reject a development plan based on the fact that the development is expected to
437 contain manufactured homes.

438 Section 6. Section **19-5-121** is amended to read:

439 **19-5-121. Underground wastewater disposal systems -- Certification required to**
440 **design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules --**
441 **Fees.**

442 (1) As used in this section, "maintain" does not include the pumping of an underground
443 wastewater disposal system.

444 (2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002,
445 a person may not design, inspect, maintain, or conduct percolation or soil tests for an
446 underground wastewater disposal system, without first obtaining certification from the board.

447 (b) An individual is not required to obtain certification from the board to maintain an
448 underground wastewater disposal system that serves a noncommercial, private residence owned
449 by the individual or a member of the individual's family and in which the individual or a
450 member of the individual's family resides or an employee of the individual resides without
451 payment of rent.

452 (c) The board shall make rules allowing an uncertified individual to conduct
453 percolation or soil tests for an underground wastewater disposal system that serves a
454 noncommercial, private residence owned by the individual and in which the individual resides
455 or intends to reside, or which is intended for use by an employee of the individual without
456 payment of rent, if the individual:

457 (i) has the capability of properly conducting the tests; and

458 (ii) is supervised by a certified individual when conducting the tests.

459 (3) (a) The board shall adopt and enforce rules for the certification and recertification

460 of individuals who design, inspect, maintain, or conduct percolation or soil tests for
461 underground wastewater disposal systems.

462 (b) (i) The rules shall specify requirements for education and training and the type and
463 duration of experience necessary to obtain certification.

464 (ii) The rules shall recognize the following in meeting the requirements for
465 certification:

466 (A) the experience of a contractor licensed under Title [58] 61, Chapter [55] 2e, Utah
467 Construction Trades Licensing Act, who has five or more years of experience installing
468 underground wastewater disposal systems;

469 (B) the experience of an environmental health scientist licensed under Title 58, Chapter
470 20a, Environmental Health Scientist Act; or

471 (C) the educational background of a professional engineer licensed under Title 58,
472 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

473 (iii) If eligibility for certification is based on experience, the applicant for certification
474 must show proof of experience.

475 (4) The department may establish fees in accordance with Section 63-38-3.2 for the
476 testing and certification of individuals who design, inspect, maintain, or conduct percolation or
477 soil tests for underground wastewater disposal systems.

478 Section 7. Section **26-15-3** is amended to read:

479 **26-15-3. Department to advise Uniform Building Code Commission regarding the**
480 **code and specific edition of a plumbing code -- Enforcement.**

481 (1) The department shall advise the Division of [~~Occupational and Professional~~
482 ~~Licensing~~] Real Estate and the Uniform Building Code Commission with respect to the code
483 and specific edition of a plumbing code adopted by a nationally recognized code authority to be
484 adopted by the Division of [~~Occupational and Professional Licensing~~] Real Estate, and
485 amendments to that code as provided for under Section [~~58-56-5~~] 61-2f-104.

486 (2) The department may enforce the plumbing code adopted by the Division of
487 [~~Occupational and Professional Licensing~~] Real Estate under Section [~~58-56-4~~] 61-2f-201.
488 [~~The provisions of~~]

489 (3) Section [~~58-56-9 do~~] 61-2f-302 does not apply to health inspectors acting under this
490 section.

491 Section 8. Section **26A-1-113** is amended to read:

492 **26A-1-113. Right of entry to regulated premises by representatives for inspection.**

493 (1) Upon presenting proper identification, authorized representatives of local health
494 departments may enter upon the premises of properties regulated by local health departments to
495 perform routine inspections to ~~[insure]~~ ensure compliance with rules, standards, regulations,
496 and ordinances as adopted by:

497 (a) the ~~[Departments]~~ Department of Health ~~[and]~~;

498 (b) the Department of Environmental Quality[-];

499 (c) local boards of health[-];

500 (d) county or municipal governing bodies[-]; or

501 (e) the Division of ~~[Occupational and Professional Licensing]~~ Real Estate under
502 Section ~~[58-56-4]~~ 61-2f-201.

503 (2) Section ~~[58-56-9]~~ 61-2f-302 does not apply to health inspectors acting under this
504 section.

505 (3) This section does not authorize local health departments to inspect private
506 dwellings.

507 Section 9. Section **26A-1-114** is amended to read:

508 **26A-1-114. Powers and duties of departments.**

509 (1) A local health department may:

510 (a) subject to ~~[the provisions in]~~ Section 26A-1-108, enforce state laws, local
511 ordinances, department rules, and local health department standards and regulations relating to
512 public health and sanitation, including the plumbing code adopted by the Division of
513 ~~[Occupational and Professional Licensing]~~ Real Estate under Section ~~[58-56-4]~~ 61-2f-201 and
514 under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and
515 unincorporated areas served by the local health department;

516 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical
517 control over property and over individuals as the local health department finds necessary for
518 the protection of the public health;

519 (c) establish and maintain medical, environmental, occupational, and other laboratory
520 services considered necessary or proper for the protection of the public health;

521 (d) establish and operate reasonable health programs or measures not in conflict with

522 state law that:

523 (i) are necessary or desirable for the promotion or protection of the public health and
524 the control of disease; or

525 (ii) may be necessary to ameliorate the major risk factors associated with the major
526 causes of injury, sickness, death, and disability in the state;

527 (e) close theaters, schools, and other public places and prohibit gatherings of people
528 when necessary to protect the public health;

529 (f) abate nuisances or eliminate sources of filth and infectious and communicable
530 diseases affecting the public health and bill the owner or other person in charge of the premises
531 upon which this nuisance occurs for the cost of abatement;

532 (g) make necessary sanitary and health investigations and inspections on its own
533 initiative or in cooperation with the Department of Health or Environmental Quality, or both,
534 as to any matters affecting the public health;

535 (h) pursuant to county ordinance or interlocal agreement:

536 (i) establish and collect appropriate fees for the performance of services and operation
537 of authorized or required programs and duties;

538 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
539 property, services, or materials for public health purposes; and

540 (iii) make agreements not in conflict with state law that are conditional to receiving a
541 donation or grant;

542 (i) prepare, publish, and disseminate information necessary to inform and advise the
543 public concerning:

544 (i) the health and wellness of the population, specific hazards, and risk factors that may
545 adversely affect the health and wellness of the population; and

546 (ii) specific activities individuals and institutions can engage in to promote and protect
547 the health and wellness of the population;

548 (j) investigate the causes of morbidity and mortality;

549 (k) issue notices and orders necessary to carry out this part;

550 (l) conduct studies to identify injury problems, establish injury control systems,
551 develop standards for the correction and prevention of future occurrences, and provide public
552 information and instruction to special high risk groups;

553 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules
554 within the jurisdiction of the boards;

555 (n) cooperate with the state health department, the Department of Corrections, the
556 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
557 Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders
558 and any victims of a sexual offense;

559 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

560 (p) provide public health assistance in response to a national, state, or local emergency,
561 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
562 of the United States or other federal official requesting public health-related activities.

563 (2) The local health department shall:

564 (a) establish programs or measures to promote and protect the health and general
565 wellness of the people within the boundaries of the local health department;

566 (b) investigate infectious and other diseases of public health importance and implement
567 measures to control the causes of epidemic and communicable diseases and other conditions
568 significantly affecting the public health which may include involuntary testing of convicted
569 sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of
570 victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

571 (c) cooperate with the department in matters pertaining to the public health and in the
572 administration of state health laws; and

573 (d) coordinate implementation of environmental programs to maximize efficient use of
574 resources by developing with the Department of Environmental Quality a Comprehensive
575 Environmental Service Delivery Plan that:

576 (i) recognizes that the Department of Environmental Quality and local health
577 departments are the foundation for providing environmental health programs in the state;

578 (ii) delineates the responsibilities of the department and each local health department
579 for the efficient delivery of environmental programs using federal, state, and local authorities,
580 responsibilities, and resources;

581 (iii) provides for the delegation of authority and pass through of funding to local health
582 departments for environmental programs, to the extent allowed by applicable law, identified in
583 the plan, and requested by the local health department; and

584 (iv) is reviewed and updated annually.

585 (3) The local health department has the following duties regarding public and private
586 schools within its boundaries:

587 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
588 persons attending public and private schools;

589 (b) exclude from school attendance any person, including teachers, who is suffering
590 from any communicable or infectious disease, whether acute or chronic, if the person is likely
591 to convey the disease to those in attendance; and

592 (c) (i) make regular inspections of the health-related condition of all school buildings
593 and premises;

594 (ii) report the inspections on forms furnished by the department to those responsible for
595 the condition and provide instructions for correction of any conditions that impair or endanger
596 the health or life of those attending the schools; and

597 (iii) provide a copy of the report to the department at the time the report is made.

598 (4) If those responsible for the health-related condition of the school buildings and
599 premises do not carry out any instructions for corrections provided in a report in Subsection
600 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
601 persons responsible.

602 (5) The local health department may exercise incidental authority as necessary to carry
603 out the provisions and purposes of this part.

604 Section 10. Section **35A-4-303** is amended to read:

605 **35A-4-303. Determination of contribution rates.**

606 (1) (a) On or before January 1 of each year beginning January 1, 1985, an employer's
607 basic contribution rate will be the same as the employer's benefit ratio, determined by dividing
608 the total benefit costs charged back to an employer during the immediately preceding four
609 fiscal years by the total taxable wages of the employer for the same time period, calculated to
610 four decimal places, disregarding the remaining fraction, if any.

611 (b) In calculating the basic contribution rate under Subsection (1)(a):

612 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
613 divided by the total taxable wages for the same time period;

614 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be

615 divided by the total taxable wages for the same time period; or

616 (iii) if two fiscal years of data are not available, the data of one fiscal year shall be
617 divided by the total taxable wages for the same time period.

618 (2) (a) On or before January 1 of each year beginning with January 1, 1985, all social
619 costs as defined in Subsection 35A-4-307(1) applicable to the immediately preceding four
620 fiscal years shall be divided by the total taxable wages of all employers subject to contributions
621 for the same time period, calculated to four decimal places, disregarding the remaining fraction,
622 if any.

623 (b) In calculating the social contribution rate under Subsection (2)(a):

624 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
625 divided by the total taxable wages for the same time period; or

626 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
627 divided by the total taxable wages for the same time period.

628 (c) On or after January 1, 2000, the social contribution rate shall be:

629 (i) set at 0.0010 for any rate year in which the reserve factor established in Subsection
630 (3)(c) is equal to or less than 1.0000; or

631 (ii) calculated by dividing all social costs as defined in Subsection 35A-4-307(1)
632 applicable to the preceding four fiscal years by the total taxable wages of all employers subject
633 to contributions for the same time period, calculated to four decimal places, disregarding any
634 remaining fraction, for any rate year in which the reserve factor established in Subsection (3)(c)
635 is greater than 1.0000.

636 (d) (i) The social contribution rate for the rate year beginning January 1, 2004, is set at
637 .003.

638 (ii) On or after January 1, 2005, the social contribution rate shall be calculated by
639 dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four
640 fiscal years by the total taxable wages of all employers subject to contributions for the same
641 period, calculated to four decimal places, disregarding any remaining fraction.

642 (iii) Notwithstanding Subsection (2)(d)(ii), the social contribution rate for only the rate
643 year beginning January 1, 2005, may not exceed .004.

644 (3) (a) On or before January 1 of each year beginning with January 1, 1985, the reserve
645 factor shall be computed under Subsection (3)(b). For purposes of computing the reserve

646 factor:

647 (i) the five-year average benefit cost rate is calculated by:

648 (A) determining the five highest benefit cost rates experienced in the 25 years ending
649 December 31 one year prior to the computation date;

650 (B) adding together the rates determined under Subsection (3)(a)(i)(A); and

651 (C) dividing the amount under Subsection (3)(a)(i)(B) by five, calculated to four
652 decimal places, disregarding the remaining fraction, if any;

653 (ii) the minimum adequate reserve fund balance is calculated by:

654 (A) multiplying the five-year average benefit cost rate by 1.5; and

655 (B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal
656 year ending prior to the computation date, rounded to the nearest dollar;

657 (iii) the maximum adequate reserve fund balance is calculated by:

658 (A) multiplying the five-year average benefit cost rate by 2.0; and

659 (B) multiplying the amount under Subsection (3)(a)(iii)(A) by the total wages used
660 under Subsection (3)(a)(ii)(B), rounded to the nearest dollar; and

661 (iv) the computation date is the January 1 on which the reserve factor is calculated.

662 (b) (i) The reserve factor is one if the actual reserve fund balance as of June 30
663 preceding the computation date is:

664 (A) equal to or greater than the minimum adequate reserve fund balance; and

665 (B) equal to or less than the maximum adequate reserve fund balance.

666 (ii) If the actual reserve fund balance as of June 30 preceding the computation date is
667 less than the minimum adequate reserve fund balance, the reserve factor shall be the greater of:

668 (A) 2.0000 minus an amount equal to the actual reserve fund balance divided by the
669 minimum adequate reserve fund balance, calculated to four decimal places, disregarding the
670 remaining fraction, if any; or

671 (B) the reserve factor calculated in the prior year.

672 (iii) The reserve factor is 2.0000 if:

673 (A) the actual reserve fund balance as of June 30 preceding the computation date is:

674 (I) insolvent; or

675 (II) negative; or

676 (B) there is an outstanding loan from the Federal Unemployment Account.

677 (iv) If the actual reserve fund balance as of June 30 preceding the computation date is
678 more than the maximum adequate reserve fund balance, the reserve factor shall be calculated
679 by:

680 (A) dividing the actual reserve fund balance by the maximum adequate reserve fund
681 balance, calculated to four decimal places, disregarding the remaining fraction, if any; and

682 (B) subtracting the amount under Subsection (3)(b)(iv)(A) from 2.0000.

683 (c) Beginning January 1, 2000, the division shall by administrative decision set the
684 reserve factor at a rate that shall sustain an adequate reserve. For the purpose of setting the
685 reserve factor:

686 (i) the adequate reserve is defined as between 17 and 19 months of benefits at the
687 average of the five highest benefit cost rates in the last 25 years;

688 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30
689 preceding the computation date is determined to be an adequate reserve;

690 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund
691 balance as of June 30 preceding the computation date is greater than the adequate reserve;

692 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund
693 balance as of June 30 prior to the computation date is less than the adequate reserve;

694 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
695 insolvent or negative or if there is an outstanding loan from the Federal Unemployment
696 Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June
697 30 preceding the computation date is determined to be an adequate reserve;

698 (vi) the reserve factor will be set on or before January 1 of each year; and

699 (vii) monies made available to the state under Section 903 of the Social Security Act,
700 as amended, which are received on or after January 1, 2004, may not be considered in
701 establishing the reserve factor under this section for the rate year 2005 or any subsequent rate
702 year.

703 (4) (a) Until January 1, 1995, an employer's overall contribution rate is the employer's
704 basic contribution rate multiplied by the reserve factor, if there is a reserve factor, calculated to
705 four decimal places, disregarding any further fraction, plus the social contribution rate, and
706 rounded up to the next higher multiple of .10%, but not more than a maximum overall
707 contribution rate of 8.0% and not less than 1% for new employers.

708 (b) On or after January 1, 1995, an employer's overall contribution rate is the
709 employer's basic contribution rate multiplied by the reserve factor, calculated to four decimal
710 places, disregarding any further fraction, plus the social contribution rate, and rounded to three
711 decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or
712 rounding up to the next higher number, if the fourth decimal place is .0005 or more, but not
713 more than a maximum overall contribution rate of 8.0% and not less than 1% for new
714 employers.

715 (c) On or after January 1, 2000, an employer's overall contribution rate is the
716 employer's basic contribution rate multiplied by the reserve factor established according to
717 Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus
718 the social contribution rate established according to Subsection (2)(c), and calculated to three
719 decimal places, disregarding the remaining fraction, but not more than a maximum overall
720 contribution rate of 8.0%, plus the applicable social contribution rate and not less than 1.1% for
721 new employers.

722 (d) On or after January 1, 2004, an employer's overall contribution rate is the
723 employer's basic contribution rate multiplied by the reserve factor established according to
724 Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus
725 the social contribution rate established according to Subsection (2)(d), and calculated to three
726 decimal places, disregarding the remaining fraction, but not more than a maximum overall
727 contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for
728 new employers.

729 (e) The overall contribution rate does not include the addition of any penalty applicable
730 to an employer as a result of delinquency in the payment of contributions as provided in
731 Subsection (10).

732 (5) Except as provided in Subsection (10), each new employer shall pay a contribution
733 rate based on the average benefit cost rate experienced by employers of the major industry as
734 defined by department rule to which the new employer belongs, the basic contribution rate to
735 be determined as follows:

736 (a) Except as provided in Subsection (5)(b), on or before January 1 of each year, the
737 basic contribution rate to be used in computing the employer's overall contribution rate is the
738 benefit cost rate which is the greater of:

739 (i) the amount calculated by dividing the total benefit costs charged back to both active
740 and inactive employers of the same major industry for the last two fiscal years by the total
741 taxable wages paid by those employers that were paid during the same time period, computed
742 to four decimal places, disregarding the remaining fraction, if any; or

743 (ii) 1%.

744 (b) If the major industrial classification assigned to a new employer is an industry for
745 which a benefit cost rate does not exist because the industry has not operated in the state or has
746 not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This
747 basic contribution rate is used in computing the employer's overall contribution rate.

748 (6) (a) A reopening employer's basic contribution rate is the average overall
749 contribution rate for all employers in the state, but not less than 1%, until such time as the
750 reopening employer becomes a qualified employer as defined in Section 35A-4-301.

751 (b) The average overall contribution rate for all employers in the state shall be defined
752 by rule.

753 (c) The reopening employer is an employer that is not substantially related to or
754 affiliated with the predecessor employer and that acquires, for the purpose of reopening,
755 substantially all the assets of a business or operating component of a business that has been
756 closed or substantially closed for 90 days or more of its normal operating period immediately
757 prior to the acquisition.

758 (d) A business or operating component of a business has been substantially closed if:

759 (i) its normal production has been stopped;

760 (ii) a majority of its workers have been laid off; and

761 (iii) the services of remaining employees are devoted to the protection and disposition
762 of assets and inventory or administrative duties.

763 (7) Notwithstanding any other provision of this chapter, and except as provided in
764 Subsection (8), if an employing unit that moves into this state is declared to be a qualified
765 employer because it has sufficient payroll and benefit cost experience under another state, a
766 rate shall be computed on the same basis as a rate is computed for all other employers subject
767 to this chapter if that unit furnishes adequate records on which to compute the rate.

768 (8) An employer who begins to operate in this state after having operated in another
769 state shall be assigned the maximum overall contribution rate until the employer acquires

770 sufficient experience in this state to be considered a "qualified employer" if the employer is:

771 (a) regularly engaged as a contractor in the construction, improvement, or repair of
772 buildings, roads, or other structures on lands;

773 (b) generally regarded as being a construction contractor or a subcontractor specialized
774 in some aspect of construction; or

775 (c) required to have a contractor's license or similar qualification under Title [58] 61,
776 Chapter [55] 2e, Utah Construction Trades Licensing Act, or the equivalent in laws of another
777 state.

778 (9) (a) If an employer, other than a reopening employer, acquires the business or all or
779 substantially all the assets of another employer and the other employer had discontinued
780 operations upon the acquisition:

781 (i) for purposes of determining and establishing the acquiring party's qualifications for
782 an experience rating classification, the payrolls of both employers during the qualifying period
783 shall be jointly considered in determining the period of liability with respect to:

784 (A) the filing of contribution reports;

785 (B) the payment of contributions; and

786 (C) after January 1, 1985, the benefit costs of both employers; and

787 (ii) the transferring employer shall be divested of the transferring employer's payroll
788 experience.

789 (b) Any employing unit or prospective employing unit that acquires the payroll
790 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
791 of acquisition.

792 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
793 Subsection (9)(a), is divested of the employer's payroll experience by transferring all of the
794 employer's business to another and by ceasing operations as of the date of the transfer, the
795 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
796 transfer.

797 (10) (a) A rate of less than 8% shall be effective January 1 of any contribution year on
798 or after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum
799 overall contribution rate on or after January 1, 1988, only with respect to new employers and to
800 those qualified employers who, except for amounts due under division determinations that have

801 not become final, paid all contributions prescribed by the division with respect to the four
802 consecutive calendar quarters in the fiscal year immediately preceding the computation date on
803 or after January 1, 1985.

804 (b) Notwithstanding Subsections (1), (5), (6), (7), and (9), on or after January 1, 1988,
805 any employer who fails to pay all contributions prescribed by the division with respect to the
806 four consecutive calendar quarters in the fiscal year immediately preceding the computation
807 date, except for amounts due under determinations that have not become final, shall pay a
808 contribution rate equal to the overall contribution rate determined under the experience rating
809 provisions of this chapter, plus a surcharge of 1% of wages.

810 (c) Any employer who pays all required contributions shall, for the current contribution
811 year, be assigned a rate based upon the employer's own experience as provided under the
812 experience rating provisions of this chapter effective the first day of the calendar quarter in
813 which the payment was made.

814 (d) Delinquency in filing contribution reports shall not be the basis for denial of a rate
815 less than the maximum contribution rate.

816 Section 11. Section **38-1-7 (Effective 05/01/05)** is amended to read:

817 **38-1-7 (Effective 05/01/05). Notice of claim -- Contents -- Recording -- Service on**
818 **owner of property.**

819 (1) (a) Except as modified in Section 38-1-27, a person claiming benefits under this
820 chapter shall file for record with the county recorder of the county in which the property, or
821 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
822 from the date of final completion of the original contract under which the claimant claims a
823 lien under this chapter. For purposes of this Subsection (1), final completion of the original
824 contract means:

825 (i) if as a result of work performed under the original contract a permanent certificate
826 of occupancy is required for such work, the date of issuance of a permanent certificate of
827 occupancy by the local government entity having jurisdiction over the construction project;

828 (ii) if no certificate of occupancy is required by the local government entity having
829 jurisdiction over the construction project, but as a result of the work performed under the
830 original contract an inspection is required for such work, the date of the final inspection for
831 such work by the local government entity having jurisdiction over the construction project; or

832 (iii) if with regard to work performed under the original contract no certificate of
833 occupancy and no final inspection are required by the local government entity having
834 jurisdiction over the construction project, the date on which there remains no substantial work
835 to be completed to finish such work on the original contract.

836 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work
837 after the applicable dates established by Subsections (1)(a)(i) and (ii), that subcontractor's
838 subcontract shall be considered an original contract for the sole purpose of determining:

839 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien
840 under Subsection (1); and

841 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien
842 under Subsection (1) for that subcontractor's work.

843 (c) For purposes of this section, the term "substantial work" does not include:

844 (i) repair work;

845 (ii) warranty work; or

846 (iii) work for which the project owner is not holding payment to ensure completion of
847 that work.

848 (2) (a) The notice required by Subsection (1) shall contain a statement setting forth:

849 (i) the name of the reputed owner if known or, if not known, the name of the record
850 owner;

851 (ii) the name of the person:

852 (A) by whom the lien claimant was employed; or

853 (B) to whom the lien claimant furnished the equipment or material;

854 (iii) the time when:

855 (A) the first and last labor or service was performed; or

856 (B) the first and last equipment or material was furnished;

857 (iv) a description of the property, sufficient for identification;

858 (v) the name, current address, and current phone number of the lien claimant;

859 (vi) the amount of the lien claim;

860 (vii) the signature of the lien claimant or the lien claimant's authorized agent;

861 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

862 Recording of Documents; and

863 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
864 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
865 a lien claimant to remove the lien in accordance with Section 38-11-107.

866 (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to
867 hold and claim a lien.

868 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
869 mail by certified mail a copy of the notice of lien to:

870 (i) the reputed owner of the real property; or

871 (ii) the record owner of the real property.

872 (b) If the record owner's current address is not readily available to the lien claimant, the
873 copy of the claim may be mailed to the last-known address of the record owner, using the
874 names and addresses appearing on the last completed real property assessment rolls of the
875 county where the affected property is located.

876 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
877 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
878 owner or record owner in an action to enforce the lien.

879 (4) The Division of [~~Occupational and Professional Licensing~~] Real Estate shall make
880 rules governing the form of the statement required under Subsection (2)(a)(ix).

881 Section 12. Section **38-1-11** is amended to read:

882 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
883 **Instructions and form affidavit and motion.**

884 (1) A lien claimant shall file an action to enforce the lien filed under this chapter within
885 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.

886 (2) (a) Within the time period provided for filing in Subsection (1) the lien claimant
887 shall file for record with the county recorder of each county in which the lien is recorded a
888 notice of the pendency of the action, in the manner provided in actions affecting the title or
889 right to possession of real property, or the lien shall be void, except as to persons who have
890 been made parties to the action and persons having actual knowledge of the commencement of
891 the action.

892 (b) The burden of proof shall be upon the lien claimant and those claiming under the
893 lien claimant to show actual knowledge.

894 (3) This section may not be interpreted to impair or affect the right of any person to
895 whom a debt may be due for any work done or materials furnished to maintain a personal
896 action to recover the same.

897 (4) (a) If a lien claimant files an action to enforce a lien filed under this chapter
898 involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the
899 service of the complaint on the owner of the residence:

900 (i) instructions to the owner of the residence relating to the owner's rights under Title
901 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

902 (ii) a form affidavit to enable the owner of the residence to specify the grounds upon
903 which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien
904 Restriction and Lien Recovery Fund Act.

905 (b) The instructions and form affidavit required by Subsection (4)(a) shall meet the
906 requirements established by rule by the Division of [~~Occupational and Professional Licensing~~]
907 Real Estate in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

908 (c) If a lien claimant fails to provide to the owner of the residence the instructions and
909 form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining
910 or enforcing the lien upon the residence.

911 (d) Judicial determination of the rights and liabilities of the owner of the residence
912 under [~~Title 38, Chapters 1 and~~] this chapter, Chapter 11, Residence Lien Restriction and Lien
913 Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the
914 owner has been given a reasonable period of time to establish compliance with Subsections
915 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63, Chapter
916 46b, Administrative Procedures Act, commenced within 30 days of the owner being served
917 summons in the foreclosure action, at the Division of [~~Occupational and Professional~~
918 Licensing] Real Estate and obtain a certificate of compliance or denial of certificate of
919 compliance, as defined in Section 38-11-102.

920 (5) The written notice requirement applies to liens filed on or after July 1, 2004.

921 Section 13. Section **38-1-27 (Effective 05/01/05)** is amended to read:

922 **38-1-27 (Effective 05/01/05). Construction notice registry -- Form and contents of**
923 **notice of commencement, preliminary notice, and notice of completion.**

924 (1) As used in this section and Sections 38-1-30 through 38-1-37:

925 (a) "Database" means the Construction Notice Registry Database created in this
926 section.

927 (b) (i) "Designated agent" means the third party the Division of [~~Occupational and~~
928 ~~Professional Licensing~~] Real Estate contracts with to create and maintain the Construction
929 Notice Registry Database.

930 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
931 the state.

932 (c) "Division" means the Division of [~~Occupational and Professional Licensing~~] Real
933 Estate.

934 (d) "Program" means the Construction Notice Registry Database Program created in
935 this section.

936 (2) Subject to receiving adequate funding through a legislative appropriation and
937 contracting with an approved third party vendor who meets the requirements of Sections
938 38-1-30 through 38-1-37, there is created the Construction Notice Registry Database Program
939 which shall:

940 (a) assist in protecting public health, safety, and welfare and promote a fair working
941 environment;

942 (b) be overseen by the division with the assistance of the designated agent;

943 (c) provide a central repository for notices of commencement, preliminary notices, and
944 notices of completion filed in connection with all privately owned construction projects as well
945 as all state and local government owned construction projects throughout Utah;

946 (d) be accessible for filing and review of notices of commencement, preliminary
947 notices, and notices of completion [~~via~~] by way of the program Internet website;

948 (e) accommodate electronic filing of such notices as well as provide for alternate filing
949 by U.S. mail, telefax, telephone, or any other alternate method as provided by rule made by the
950 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

951 (f) provide electronic notification for up to three e-mail addresses for each interested
952 person or company who requests notice from the construction notice registry as well as provide
953 alternate means of notification for those persons who make alternate filings, including U.S.
954 mail, telefax, or any other method as prescribed by rule made by the division in accordance
955 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

956 (g) provide hard-copy printing of electronic receipts for individual filings evidencing
957 the date and time of individual filings as well as the content of individual filings.

958 (3) Persons interested in a construction project may request notice of filings related to
959 the project. The database shall be indexed by owner name, original contractor name, project
960 name, project address, parcel number, project number, and any other identifier that the division
961 considers reasonably appropriate and established by rule, made in accordance with Title 63,
962 Chapter 46a, Utah Administrative Rulemaking Act.

963 (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
964 the division shall establish by rule the filing fees for notices of commencement, preliminary
965 notices, notices of completion, and requests for notice, which fees may not exceed the amount
966 reasonably necessary to create and maintain the database.

967 (b) The fees established by the division may vary by method of filing if one form of
968 filing is more costly than other forms of filing.

969 Section 14. Section **38-11-102** is amended to read:

970 **38-11-102. Definitions.**

971 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established
972 under Section 38-11-104.

973 (2) "Certificate of compliance" means an order issued by the director to the owner
974 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
975 and (4)(b) and is entitled to protection under Section 38-11-107.

976 (3) "Construction on an owner-occupied residence" means designing, engineering,
977 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
978 residence.

979 (4) "Department" means the Department of Commerce.

980 (5) "Director" means the director of the Division of [~~Occupational and Professional~~
981 ~~Licensing~~] Real Estate.

982 (6) "Division" means the Division of [~~Occupational and Professional Licensing~~] Real
983 Estate.

984 (7) "Duplex" means a single building having two separate living units.

985 (8) "Encumbered fund balance" means the aggregate amount of outstanding claims
986 against the fund. The remainder of monies in the fund are unencumbered funds.

987 (9) "Executive director" means the executive director of the Department of Commerce.

988 (10) "Factory built housing" is as defined in Section ~~[58-56-3]~~ 61-2f-103.

989 (11) "Factory built housing retailer" means a person that sells factory built housing to
990 consumers.

991 (12) "Fund" means the Residence Lien Recovery Fund established under Section
992 38-11-201.

993 (13) "Laborer" means a person who provides services at the site of the construction on
994 an owner-occupied residence as an employee of an original contractor or other qualified
995 beneficiary performing qualified services on the residence.

996 (14) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22,
997 53, and ~~[55]~~ Title 61, Chapter 2e, Utah Construction Trades Licensing Act.

998 (15) "Nonpaying party" means the original contractor, subcontractor, or real estate
999 developer who has failed to pay the qualified beneficiary making a claim against the fund.

1000 (16) "Original contractor" means a person who contracts with the owner of real
1001 property or the owner's agent to provide services, labor, or material for the construction of an
1002 owner-occupied residence.

1003 (17) "Owner" means a person who:

1004 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
1005 under Title ~~[58]~~ 61, Chapter ~~[55]~~ 2e, Utah Construction Trades Licensing Act, for the
1006 construction on an owner-occupied residence upon real property owned by that person;

1007 (b) contracts with a real estate developer to buy a residence upon completion of the
1008 construction on the owner-occupied residence; or

1009 (c) buys a residence from a real estate developer after completion of the construction
1010 on the owner-occupied residence.

1011 (18) "Owner-occupied residence" means a residence that is, or after completion of the
1012 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
1013 primary or secondary residence within 180 days from the date of the completion of the
1014 construction on the residence.

1015 (19) "Qualified beneficiary" means a person who:

1016 (a) provides qualified services;

1017 (b) pays necessary fees or assessments required under this chapter; and

- 1018 (c) registers with the division:
- 1019 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks
- 1020 recovery from the fund as a licensed contractor; or
- 1021 (ii) as a person providing qualified services other than as a licensed contractor under
- 1022 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as
- 1023 a licensed contractor.
- 1024 (20) (a) "Qualified services" means the following performed in construction on an
- 1025 owner-occupied residence:
- 1026 (i) contractor services provided by a contractor licensed or exempt from licensure
- 1027 under Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act;
- 1028 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,
- 1029 Architects Licensing Act;
- 1030 (iii) engineering and land surveying services provided by a professional engineer or
- 1031 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional
- 1032 Engineers and Professional Land Surveyors Licensing Act;
- 1033 (iv) landscape architectural services by a landscape architect licensed or exempt from
- 1034 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;
- 1035 (v) design and specification services of mechanical or other systems;
- 1036 (vi) other services related to the design, drawing, surveying, specification, cost
- 1037 estimation, or other like professional services;
- 1038 (vii) providing materials, supplies, components, or similar products;
- 1039 (viii) renting equipment or materials;
- 1040 (ix) labor at the site of the construction on the owner-occupied residence; and
- 1041 (x) site preparation, set up, and installation of factory built housing.
- 1042 (b) "Qualified services" do not include the construction of factory built housing in the
- 1043 factory.
- 1044 (21) "Real estate developer" means a person having an ownership interest in real
- 1045 property who contracts with a person who is licensed as a contractor or is exempt from
- 1046 licensure under Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, for the
- 1047 construction of a residence that is offered for sale to the public.
- 1048 (22) (a) "Residence" means an improvement to real property used or occupied, to be

1049 used or occupied as, or in conjunction with:

1050 (i) a primary or secondary detached single-family dwelling; or

1051 (ii) a multifamily dwelling up to and including duplexes.

1052 (b) "Residence" includes factory built housing.

1053 (23) "Subsequent owner" means a person who purchases a residence from an owner

1054 within 180 days from the date the construction on the residence is completed.

1055 Section 15. Section **38-11-103** is amended to read:

1056 **38-11-103. Administration.**

1057 This chapter shall be administered by the Division of [~~Occupational and Professional~~
1058 ~~Licensing~~] Real Estate pursuant to [~~the provisions of~~] this chapter and consistent with [~~Title 58,~~
1059 ~~Chapter 1~~] Title 61, Chapter 2e, Utah Construction Trades Licensing Act.

1060 Section 16. Section **38-11-204** is amended to read:

1061 **38-11-204. Claims against the fund -- Requirement to make a claim --**

1062 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
1063 **compliance.**

1064 (1) To claim recovery from the fund a person shall:

1065 (a) meet the requirements of either Subsection (4) or (7);

1066 (b) pay an application fee determined by the division under Section 63-38-3.2; and

1067 (c) file with the division a completed application on a form provided by the division
1068 accompanied by supporting documents establishing:

1069 (i) that the person meets the requirements of either Subsection (4) or (7);

1070 (ii) that the person was a qualified beneficiary or laborer during the construction on the
1071 owner-occupied residence; and

1072 (iii) the basis for the claim.

1073 (2) To recover from the fund, the application required by Subsection (1) shall be filed
1074 no later than one year:

1075 (a) from the date the judgment required by Subsection (4)(d) is entered;

1076 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded
1077 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the
1078 nonpaying party filed bankruptcy within one year after the entry of judgment; or

1079 (c) from the date the laborer, trying to recover from the fund, completed the laborer's

1080 qualified services.

1081 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish
1082 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

1083 (4) To recover from the fund, regardless of whether the residence is occupied by the
1084 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
1085 beneficiary shall establish that:

1086 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
1087 written contract with an original contractor licensed or exempt from licensure under Title [58]
1088 61, Chapter [55] 2e, Utah Construction Trades Licensing Act:

1089 (A) for the performance of qualified services;

1090 (B) to obtain the performance of qualified services by others; or

1091 (C) for the supervision of the performance by others of qualified services in
1092 construction on that residence;

1093 (ii) the owner of the owner-occupied residence or the owner's agent entered into a
1094 written contract with a real estate developer for the purchase of an owner-occupied residence;
1095 or

1096 (iii) the owner of the owner-occupied residence or the owner's agent entered into a
1097 written contract with a factory built housing retailer for the purchase of an owner-occupied
1098 residence;

1099 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
1100 under Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, real estate
1101 developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a
1102 written contract in accordance with the written contract and any amendments to the contract;

1103 (c) (i) the original contractor, licensed or exempt from licensure under Title [58] 61,
1104 Chapter [55] 2e, Utah Construction Trades Licensing Act, the real estate developer, or the
1105 factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled
1106 to payment under an agreement with that original contractor or real estate developer licensed or
1107 exempt from licensure under Title [58] 61, Chapter [55] 2e, Utah Construction Trades
1108 Licensing Act, for services performed or materials supplied by the qualified beneficiary;

1109 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
1110 licensure under Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, the

1111 real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary
1112 who is entitled to payment under an agreement with that subcontractor or supplier; or
1113 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
1114 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
1115 supplier;
1116 (d) (i) the qualified beneficiary filed:
1117 (A) an action against the nonpaying party to recover monies owed to the qualified
1118 beneficiary within 180 days from the date the qualified beneficiary last provided qualified
1119 services, unless precluded from doing so by the nonpaying party's bankruptcy filing within the
1120 180 days after completion of services; and
1121 (B) a notice of commencement of action with the division within 30 days from the date
1122 the qualified beneficiary filed the civil action if a civil action was filed as required by
1123 Subsection (4)(d)(i)(A);
1124 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
1125 failed to pay the qualified beneficiary under an agreement to provide qualified services for
1126 construction of that owner-occupied residence;
1127 (iii) (A) the qualified beneficiary has:
1128 (I) obtained from a court of competent jurisdiction the issuance of an order requiring
1129 the judgment debtor, or if a corporation any officer of the corporation, to appear before the
1130 court at a specified time and place to answer concerning the debtor's or corporation's property;
1131 (II) received return of service of the order from a person qualified to serve documents
1132 under the Utah Rules of Civil Procedure, Rule 4(b); and
1133 (III) made reasonable efforts to obtain asset information from the supplemental
1134 proceedings; and
1135 (B) if assets subject to execution are discovered as a result of the order required under
1136 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution
1137 from a court of competent jurisdiction; or
1138 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the
1139 bankruptcy action, if the nonpaying party has filed bankruptcy;
1140 (e) the qualified beneficiary is not entitled to reimbursement from any other person;
1141 and

1142 (f) the qualified beneficiary provided qualified services to a contractor, licensed or
1143 exempt from licensure under Title [58] 61, Chapter [55] 2e, Utah Construction Trades
1144 Licensing Act.

1145 (5) The requirements of Subsections (4)(d)(i), (ii), and (iii) need not be met if the
1146 qualified beneficiary has been precluded from obtaining a judgment against the nonpaying
1147 party or from satisfying the requirements of Subsections (4)(d)(i), (ii), and (iii) because the
1148 nonpaying party filed bankruptcy.

1149 (6) If a qualified beneficiary fails to file the notice with the division required under
1150 Subsection (4)(d)(i)(B), the claim of the qualified beneficiary shall be paid:

1151 (a) if otherwise qualified under this chapter;

1152 (b) to the extent that the limit of Subsection 38-11-203(4)(a) has not been reached by
1153 payments from the fund to qualified beneficiaries who have complied with the notice
1154 requirements of Subsection (4)(d)(i)(B); and

1155 (c) in the order that the claims are filed by persons who fail to comply with Subsection
1156 (4)(d)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a).

1157 (7) To recover from the fund a laborer shall:

1158 (a) establish that the laborer has not been paid wages due for the work performed at the
1159 site of a construction on an owner-occupied residence; and

1160 (b) provide any supporting documents or information required by rule by the division.

1161 (8) A fee determined by the division under Section 63-38-3.2 shall be deducted from
1162 any recovery from the fund received by a laborer.

1163 (9) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner or
1164 agent of the owner establishes to the satisfaction of the director that the owner of the
1165 owner-occupied residence or the owner's agent entered into a written contract with an original
1166 contractor who:

1167 (a) was a business entity that was not licensed under Title [58] 61, Chapter [55] 2e,
1168 Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who
1169 was licensed under Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act; or

1170 (b) was a natural person who was not licensed under Title [58] 61, Chapter [55] 2e,
1171 Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of
1172 a business entity that was licensed under Title [58] 61, Chapter [55] 2e, Utah Construction

1173 Trades Licensing Act.

1174 (10) The director shall have equitable power to determine if the requirements of
1175 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under Title 38,
1176 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, shall not alter or have
1177 any effect on any other decision by the division under Title [58] 61, Securities Division - Real
1178 Estate Division.

1179 Section 17. Section **38-11-207** is amended to read:

1180 **38-11-207. Reimbursement to the fund.**

1181 (1) If the director disburses monies from the fund as a result of a person licensed under
1182 Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, or a qualified
1183 beneficiary failing to pay qualified beneficiaries:

1184 (a) the division shall issue a notice of the disbursement from the fund and the
1185 obligation to reimburse the fund to the licensee or qualified beneficiary; and

1186 (b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from
1187 the issuance of the notice required by Subsection (1)(a).

1188 (2) The notice required by Subsection (1)(a) shall meet the requirements established by
1189 rule by the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
1190 Act.

1191 (3) (a) A finding of fact in an administrative action that a payment of any amount has
1192 been made from the fund in settlement of a claim arising from the act, representation,
1193 transaction, or conduct of a person licensed under Title [58] 61, Chapter [55] 2e, Utah
1194 Construction Trades Licensing Act, in violation of Section [58-55-603] 61-2e-603 shall result
1195 in the immediate suspension of that person's license without further compliance with Title 63,
1196 Chapter 46b, Administrative Procedures Act.

1197 (b) The finding of fact for Subsection (3)(a) may be made in the same administrative
1198 action as the related claim and may be included in the findings required by Section 38-11-203.

1199 (c) The suspension required by Subsection (3)(a) shall remain in effect until the person
1200 applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and
1201 [~~58-55-303~~] 61-2e-303.

1202 Section 18. Section **38-11-301** is amended to read:

1203 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**

1204 **Affidavit.**

1205 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title
1206 [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, in license classifications
1207 that regularly engage in providing qualified services shall be automatically registered as a
1208 qualified beneficiary upon payment of the initial assessment.

1209 (2) A person applying for licensure as a contractor after July 1, 1995, in license
1210 classifications that regularly engage in providing qualified services shall be automatically
1211 registered as a qualified beneficiary upon issuance of a license and payment of the initial
1212 assessment.

1213 (3) (a) After July 1, 1995, any person providing qualified services as other than a
1214 contractor as provided in Subsection (1) or any person exempt from licensure under the
1215 provisions of Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, may
1216 register as a qualified beneficiary by:

- 1217 (i) submitting an application in a form prescribed by the division;
- 1218 (ii) demonstrating registration with the Division of Corporations and Commercial Code
1219 as required by state law;
- 1220 (iii) paying a registration fee determined by the division under Section 63-38-3.2; and
- 1221 (iv) paying the initial assessment established under Subsection (4), and any special
1222 assessment determined by the division under Subsection 38-11-206(1).

1223 (b) A person who does not register under Subsection (1), (2), or (3)(a) shall be
1224 prohibited from recovering under the fund as a qualified beneficiary for work performed as
1225 qualified services while not registered with the fund.

1226 (4) (a) An applicant shall pay an initial assessment determined by the division under
1227 Section 63-38-3.2.

1228 (b) The initial assessment to qualified registrants under Subsection (1) shall be made
1229 not later than July 15, 1995, and shall be paid no later than November 1, 1995.

1230 (c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be
1231 paid at the time of application for license or registration, however, beginning on May 1, 1996,
1232 only one initial assessment or special assessments thereafter shall be required for persons
1233 having multiple licenses under this section.

1234 (5) A person shall be considered to have been registered as a qualified beneficiary on

1235 January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if
1236 the person:

1237 (a) (i) is licensed on or before July 1, 1995, as a contractor under [~~the provisions of~~
1238 Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act, in license
1239 classifications that regularly engage in providing qualified services; or

1240 (ii) provides qualified services after July 1, 1995, as other than a contractor as provided
1241 in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title [58] 61,
1242 Chapter [55] 2e, Utah Construction Trades Licensing Act; and

1243 (b) registers as a qualified beneficiary under Subsection (1) or (3) on or before
1244 November 1, 1995.

1245 Section 19. Section **38-11-302** is amended to read:

1246 **38-11-302. Effective date and term of registration -- Penalty for failure to pay**
1247 **assessments -- Reinstatement.**

1248 (1) (a) A registration as a qualified beneficiary under this chapter is effective on the
1249 date the division receives the initial assessment of the qualified beneficiary.

1250 (b) A registrant shall be required to renew [~~his~~] the registrant's registration upon
1251 imposition of a special assessment under Subsection 38-11-206(1).

1252 (2) A registration automatically expires if a registrant fails to renew [~~his~~] the
1253 registrant's registration as required under Subsection (1).

1254 (3) The division shall notify a qualified beneficiary in accordance with procedures
1255 established by rule when renewal of registration is required in connection with a special
1256 assessment.

1257 (4) The license renewal notice to a contractor shall notify the licensee that failure to
1258 renew [~~his~~] the licensee's license will result in automatic expiration of [~~his~~] the licensee's
1259 registration as a qualified beneficiary and of the limitations set forth in Subsection (6) on
1260 qualified beneficiaries whose registration has expired to make a claim upon the fund.

1261 (5) Registration may be reinstated by:

1262 (a) submitting an application for reinstatement in a form prescribed by the division;

1263 (b) paying a reinstatement fee determined by the division under Section 63-38-3.2; and

1264 (c) paying all unpaid assessments that were assessed during the period of the person's
1265 registration and all assessments made upon qualified beneficiaries during the period the

1266 applicant's registration was expired.

1267 (6) (a) A qualified beneficiary whose registration expires loses all rights to make a
1268 claim upon the fund or receive compensation from the fund resulting from providing qualified
1269 service during the period of expiration.

1270 (b) Except as provided by Section ~~[58-55-401]~~ 61-2e-401, a qualified beneficiary
1271 whose registration expires may make a claim upon the fund or receive compensation from the
1272 fund for qualified services provided during the period the qualified beneficiary was part of the
1273 fund.

1274 Section 20. Section ~~57-23-4~~ is amended to read:

1275 **57-23-4. Exclusions.**

1276 This chapter does not apply to:

1277 (1) an interest in real estate regulated under Title 57, Chapter 19, Timeshare and Camp
1278 Resort Act;

1279 (2) an offering for an interest in real estate which is regulated under:

1280 (a) Title 61, Chapter 1, Utah Uniform Securities Act;

1281 (b) the securities laws of any state; or

1282 (c) federal securities laws; or

1283 (3) a sale of manufactured housing licensed under Title ~~[58]~~ 61, Chapter ~~[56]~~ 2f, Utah
1284 Uniform Building Standards Act, unless the sale is made in conjunction with an offering or sale
1285 of a cooperative interest under this chapter.

1286 Section 21. Section ~~58-1-202~~ is amended to read:

1287 **58-1-202. Boards -- Duties, functions, and responsibilities.**

1288 ~~[(1)]~~ The duties, functions, and responsibilities of each board include the following:

1289 ~~[(a)]~~ (1) recommending to the director appropriate rules;

1290 ~~[(b)]~~ (2) recommending to the director policy and budgetary matters;

1291 ~~[(c)]~~ (3) approving and establishing a passing score for applicant examinations;

1292 ~~[(d)]~~ (4) screening applicants and recommending licensing, renewal, reinstatement, and
1293 relicensure actions to the director in writing;

1294 ~~[(e)]~~ (5) assisting the director in establishing standards of supervision for students or
1295 persons in training to become qualified to obtain a license in the occupation or profession it
1296 represents; and

1297 [(f)] (6) acting as presiding officer in conducting hearings associated with adjudicative
 1298 proceedings and in issuing recommended orders when so designated by the director.

1299 [~~(2)~~ Subsection (1) does not apply to boards created in Title 58, Chapter 55,
 1300 Construction Trades Licensing.]

1301 Section 22. Section **58-1-203** is amended to read:

1302 **58-1-203. Duties, functions, and responsibilities of division in collaboration with**
 1303 **board.**

1304 [(+)] The following duties, functions, and responsibilities of the division shall be
 1305 performed by the division with the collaboration and assistance of the appropriate board:

1306 [(a)] (1) defining which schools, colleges, universities, departments of universities, or
 1307 other institutions of learning are reputable and in good standing with the division;

1308 [(b)] (2) prescribing license qualifications;

1309 [(c)] (3) prescribing rules governing applications for licenses;

1310 [(d)] (4) providing for a fair and impartial method of examination of applicants;

1311 [(e)] (5) defining unprofessional conduct, by rule, to supplement the definitions under
 1312 this chapter or other licensing chapters;

1313 [(f)] (6) establishing advisory peer committees to the board and prescribing their scope
 1314 of authority; and

1315 [(g)] (7) establishing conditions for reinstatement and renewal of licenses.

1316 [~~(2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the~~
 1317 ~~division outlined in Subsection (1) shall, instead, be performed by the Construction Services~~
 1318 ~~Commission for all purposes of Title 58, Chapter 55, Construction Trades Licensing.]~~

1319 Section 23. Section **58-1-301.5** is amended to read:

1320 **58-1-301.5. Division access to Bureau of Criminal Identification records.**

1321 (1) The division shall have direct access to criminal background information
 1322 maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau
 1323 of Criminal Identification, for background screening of licensure applicants as required in:

1324 (a) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;

1325 (b) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act; and

1326 [~~(c) Section 58-55-302 of Title 58, Chapter 55, Construction Trades Licensing, as it~~
 1327 ~~applies to alarm companies and alarm company agents, and]~~

1328 [~~(d)~~] (c) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act.

1329 (2) The division access under Subsection (1) shall be in accordance with Section
1330 53-10-108.

1331 Section 24. Section **58-3a-102** is amended to read:

1332 **58-3a-102. Definitions.**

1333 In addition to the definitions in Section 58-1-102, as used in this chapter:

1334 (1) "Architect" means a person licensed under this chapter as an architect.

1335 (2) "Board" means the Architects Licensing Board created in Section 58-3a-201.

1336 (3) "Building" means a structure which has human occupancy or habitation as its
1337 principal purpose, and includes the structural, mechanical, and electrical systems, utility
1338 services, and other facilities required for the building, and is otherwise governed by the codes
1339 adopted under Title [58] 61, Chapter [56] 2f, Utah Uniform Building Standards Act.

1340 (4) "Complete construction plans" means a final set of plans and specifications for a
1341 building that normally includes:

1342 (a) floor plans;

1343 (b) elevations;

1344 (c) site plans;

1345 (d) foundation, structural, and framing detail;

1346 (e) electrical, mechanical, and plumbing design;

1347 (f) information required by the energy code;

1348 (g) specifications and related calculations as appropriate; and

1349 (h) all other documents required to obtain a building permit.

1350 (5) "Fund" means the Architects Education and Enforcement Fund created in Section
1351 58-3a-103.

1352 (6) (a) "Practice of architecture" means rendering or offering to render the following
1353 services in connection with the design, construction, enlargement, or alteration of a building or
1354 group of buildings, and the space within and surrounding such buildings:

1355 (i) planning;

1356 (ii) facility programming;

1357 (iii) preliminary studies;

1358 (iv) preparation of designs, drawings, and specifications;

1359 (v) preparation of technical submissions and coordination of any element of technical
1360 submissions prepared by others including, as appropriate and without limitation, professional
1361 engineers, and landscape architects; and

1362 (vi) administration of construction contracts.

1363 (b) "Practice of architecture" does not include the practice of professional engineering
1364 as defined in Section 58-22-102, but a licensed architect may perform such professional
1365 engineering work as is incidental to the practice of architecture.

1366 (7) "Principal" means a licensed architect having responsible charge of an
1367 organization's architectural practice.

1368 (8) "Supervision of an employee, subordinate, associate, or drafter of an architect"
1369 means that a licensed architect is responsible for and personally reviews, corrects when
1370 necessary, and approves work performed by any employee, subordinate, associate, or drafter
1371 under the direction of the architect, and may be further defined by rule by the division in
1372 collaboration with the board.

1373 (9) "Unlawful conduct" as defined in Section 58-1-501 is further defined in Section
1374 58-3a-501.

1375 (10) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined
1376 by rule by the division in collaboration with the board.

1377 Section 25. Section **58-3a-602** is amended to read:

1378 **58-3a-602. Plans and specifications to be sealed.**

1379 (1) Any final plan and specification of a building erected in this state shall bear the seal
1380 of an architect licensed under this chapter, except as provided in Section 58-3a-304, in Title 58,
1381 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, and by the
1382 codes adopted under Title ~~[58]~~ 61, Chapter ~~[56]~~ 2f, Utah Uniform Building Standards Act.

1383 (2) Any final plan and specification of a building prepared by or under the supervision
1384 of the licensed architect shall bear the seal of the architect when submitted to a client, or when
1385 submitted to a building official for the purpose of obtaining a building permit, even if the
1386 practice is exempt from licensure under Section 58-3a-304.

1387 Section 26. Section **58-22-102** is amended to read:

1388 **58-22-102. Definitions.**

1389 In addition to the definitions in Section 58-1-102, as used in this chapter:

1390 (1) "Board" means the Professional Engineers and Professional Land Surveyors
1391 Licensing Board created in Section 58-22-201.

1392 (2) "Building" means a structure which has human occupancy or habitation as its
1393 principal purpose, and includes the structural, mechanical, and electrical systems, utility
1394 services, and other facilities required for the building, and is otherwise governed by the codes
1395 adopted under Title [58] 61, Chapter [56] 2f, Utah Uniform Building Standards Act.

1396 (3) "Complete construction plans" means a final set of plans, specifications, and reports
1397 for a building or structure that normally includes:

- 1398 (a) floor plans;
- 1399 (b) elevations;
- 1400 (c) site plans;
- 1401 (d) foundation, structural, and framing detail;
- 1402 (e) electrical, mechanical, and plumbing design;
- 1403 (f) information required by the energy code;
- 1404 (g) specifications and related calculations as appropriate; and
- 1405 (h) all other documents required to obtain a building permit.

1406 (4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation
1407 Board for Engineering and Technology.

1408 (5) "Fund" means the Professional Engineer, Professional Structural Engineer, and
1409 Professional Land Surveyor Education and Enforcement Fund created in Section 58-22-103.

1410 (6) "NCEES" means the National Council of Examiners for Engineering and
1411 Surveying.

1412 (7) "Principal" means a licensed professional engineer, professional structural engineer,
1413 or professional land surveyor having responsible charge of an organization's professional
1414 engineering, professional structural engineering, or professional land surveying practice.

1415 (8) "Professional engineer" means a person licensed under this chapter as a
1416 professional engineer.

1417 (9) "Professional engineering or the practice of engineering" means any service or
1418 creative work, the adequate performance of which requires engineering education, training, and
1419 experience in the application of special knowledge of the mathematical, physical, and
1420 engineering sciences to such services or creative work as consultation, investigation,

1421 evaluation, planning, design, and design coordination of engineering works and systems,
1422 planning the use of land and water, facility programming, performing engineering surveys and
1423 studies, and the review of construction for the purpose of monitoring compliance with
1424 drawings and specifications; any of which embraces such services or work, either public or
1425 private, in connection with any utilities, structures, buildings, machines, equipment, processes,
1426 work systems, projects, and industrial or consumer products or equipment of a mechanical,
1427 electrical, hydraulic, pneumatic, or thermal nature, and including such other professional
1428 services as may be necessary to the planning, progress, and completion of any engineering
1429 services, provided that the practice of professional engineering shall not include the practice of
1430 architecture as defined in 58-3a-102, but a licensed professional engineer may perform such
1431 architecture work as is incidental to the practice of engineering.

1432 (10) "Professional engineering intern" means a person who has completed the
1433 education requirements to become a professional engineer, has passed the fundamentals of
1434 engineering examination, and is engaged in obtaining the four years of qualifying experience
1435 for licensure under the direct supervision of a licensed professional engineer.

1436 (11) "Professional land surveying or the practice of land surveying" means any service
1437 or work, the adequate performance of which requires the application of special knowledge of
1438 the principles of mathematics, the related physical and applied sciences, and the relevant
1439 requirements of law for adequate evidence to the act of measuring and locating lines, angles,
1440 elevations, natural and man-made features in the air, on the surface of the earth, within
1441 underground workings, and on the beds of bodies of water for the purpose of determining areas
1442 and volumes, for the monumenting or locating property boundaries or points controlling
1443 boundaries, and for the platting and layout of lands and subdivisions thereof, including the
1444 topography, alignment and grades of streets, and for the preparation and perpetuation of maps,
1445 record plats, field notes records, and property descriptions that represent these surveys and such
1446 other duties as sound surveying practices could direct.

1447 (12) "Professional land surveyor" means an individual licensed under this chapter as a
1448 professional land surveyor.

1449 (13) "Professional structural engineer" means a person licensed under this chapter as a
1450 professional structural engineer.

1451 (14) "Professional structural engineering or the practice of structural engineering"

1452 means the design and analysis of complex buildings and structures and includes the definition
1453 of professional engineering or the practice of engineering provided in Subsection (9), and may
1454 be further defined by rule by the division in collaboration with the board.

1455 (15) "Structure" means that which is built or constructed, an edifice or building of any
1456 kind, or any piece of work artificially built up or composed of parts joined together in some
1457 definite manner, and as otherwise governed by the codes adopted under Title [58] 61, Chapter
1458 [56] 2f, Utah Uniform Building Standards Act.

1459 (16) " Supervision of an employee, subordinate, associate, or drafter of a licensee"
1460 means that a licensed professional engineer, professional structural engineer, or professional
1461 land surveyor is responsible for and personally reviews, corrects when necessary, and approves
1462 work performed by any employee, subordinate, associate, or drafter under the direction of the
1463 licensee, and may be further defined by rule by the division in collaboration with the board.

1464 (17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation
1465 Board for Engineering and Technology.

1466 (18) "Unlawful conduct" is defined in Sections 58-1-501 and 58-22-501.

1467 (19) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined
1468 by rule by the division in collaboration with the board.

1469 Section 27. Section **58-22-602** is amended to read:

1470 **58-22-602. Plans, specifications, reports, maps, sketches, surveys, drawings,**
1471 **documents, and plats to be sealed.**

1472 (1) Any final plan, specification, and report of a building or structure erected in this
1473 state shall bear the seal of a professional engineer or professional structural engineer licensed
1474 under this chapter, except as provided in Section 58-22-305, in Title 58, Chapter 3a,
1475 [~~Architect~~] Architects Licensing Act, and by the codes adopted under Title [58] 61, Chapter
1476 [56] 2f, Utah Uniform Building Standards Act.

1477 (2) Any final plan, specification, and report prepared by, or under the supervision of,
1478 the professional engineer or professional structural engineer shall bear the seal of the
1479 professional engineer or professional structural engineer when submitted to a client, when filed
1480 with public authorities, or when submitted to a building official for the purpose of obtaining a
1481 building permit, even if the practice is exempt from licensure under Section 58-22-305.

1482 (3) Any final plan, map, sketch, survey, drawing, document, plat, and report shall bear

1483 the seal of the professional land surveyor licensed under this chapter when submitted to a client
1484 or when filed with public authorities.

1485 Section 28. Section **58-53-304** is amended to read:

1486 **58-53-304. Exemptions from licensure.**

1487 In addition to the exemptions from licensure in Section 58-1-307, the following may
1488 engage in the stated limited acts or practices without being licensed under this chapter:

1489 (1) a person preparing a site plan as defined in Subsection 58-53-102(3), for a one-,
1490 two-, three-, or four-family residence not exceeding two stories in height, exclusive of the
1491 basement;

1492 (2) a person designing sprinkler irrigation systems when licensed as a landscape
1493 contractor under Title [58] 61, Chapter [55] 2e, Utah Construction Trades Licensing Act;

1494 (3) a person licensed to practice professional engineering or professional structural
1495 engineering under Title 58, Chapter 22, Professional Engineers and Professional Land
1496 Surveyors Licensing Act;

1497 (4) a person licensed to practice architecture under Title 58, Chapter 3a, Architects
1498 Licensing Act;

1499 (5) unlicensed employees of a person licensed under this chapter while preparing site
1500 plans as defined in Subsection 58-53-102(3), under the supervision of a landscape architect;
1501 and

1502 (6) an organization engaged in the practice of landscape architecture, provided that:

1503 (a) the organization employs a principal; and

1504 (b) all individuals employed by the organization, who are engaged in the practice of
1505 landscape architecture, are licensed or exempt from licensure under this chapter.

1506 Section 29. Section **58-53-602** is amended to read:

1507 **58-53-602. Site plans to be sealed.**

1508 (1) Any site plan prepared in this state shall bear the seal of a landscape architect
1509 licensed under this chapter, except as provided in Section 58-53-304, in Title 58, Chapter 22,
1510 Professional Engineers and Professional Land Surveyors Licensing Act, in Title 58, Chapter 3a,
1511 Architects Licensing Act, or by the codes adopted under Title [58] 61, Chapter [56] 2f, Utah
1512 Uniform Building Standards Act.

1513 (2) Any final site plan prepared by or under the supervision of the licensed landscape

1514 architect shall bear the seal of the landscape architect when submitted to a client, or when
1515 submitted to a building official for the purpose of obtaining a building permit, even if the
1516 practice is exempt from licensure under Section 58-53-304.

1517 Section 30. Section **59-12-102** is amended to read:

1518 **59-12-102. Definitions.**

1519 As used in this chapter:

1520 (1) (a) "Admission or user fees" includes season passes.

1521 (b) "Admission or user fees" does not include annual membership dues to private
1522 organizations.

1523 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
1524 Section 59-12-102.1.

1525 (3) "Agreement combined tax rate" means the sum of the tax rates:

1526 (a) listed under Subsection (4); and

1527 (b) that are imposed within a local taxing jurisdiction.

1528 (4) "Agreement sales and use tax" means a tax imposed under:

1529 (a) Subsection 59-12-103(2)(a)(i);

1530 (b) Section 59-12-204;

1531 (c) Section 59-12-401;

1532 (d) Section 59-12-402;

1533 (e) Section 59-12-501;

1534 (f) Section 59-12-502;

1535 (g) Section 59-12-703;

1536 (h) Section 59-12-802;

1537 (i) Section 59-12-804;

1538 (j) Section 59-12-1001;

1539 (k) Section 59-12-1102;

1540 (l) Section 59-12-1302;

1541 (m) Section 59-12-1402; or

1542 (n) Section 59-12-1503.

1543 (5) "Aircraft" is as defined in Section 72-10-102.

1544 (6) "Alcoholic beverage" means a beverage that:

- 1545 (a) is suitable for human consumption; and
- 1546 (b) contains .5% or more alcohol by volume.
- 1547 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 1548 (8) "Authorized carrier" means:
- 1549 (a) in the case of vehicles operated over public highways, the holder of credentials
- 1550 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 1551 Plan and the International Fuel Tax Agreement;
- 1552 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 1553 certificate or air carrier's operating certificate; or
- 1554 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 1555 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 1556 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 1557 following that is used as the primary source of energy to produce fuel or electricity:
- 1558 (i) material from a plant or tree; or
- 1559 (ii) other organic matter that is available on a renewable basis, including:
- 1560 (A) slash and brush from forests and woodlands;
- 1561 (B) animal waste;
- 1562 (C) methane produced:
- 1563 (I) at landfills; or
- 1564 (II) as a byproduct of the treatment of wastewater residuals;
- 1565 (D) aquatic plants; and
- 1566 (E) agricultural products.
- 1567 (b) "Biomass energy" does not include:
- 1568 (i) black liquor;
- 1569 (ii) treated woods; or
- 1570 (iii) biomass from municipal solid waste other than methane produced:
- 1571 (A) at landfills; or
- 1572 (B) as a byproduct of the treatment of wastewater residuals.
- 1573 (10) "Certified automated system" means software certified by the governing board of
- 1574 the agreement in accordance with Section 59-12-102.1 that:
- 1575 (a) calculates the agreement sales and use tax imposed within a local taxing

1576 jurisdiction:

1577 (i) on a transaction; and

1578 (ii) in the states that are members of the agreement;

1579 (b) determines the amount of agreement sales and use tax to remit to a state that is a

1580 member of the agreement; and

1581 (c) maintains a record of the transaction described in Subsection (10)(a)(i).

1582 (11) "Certified service provider" means an agent certified:

1583 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;

1584 and

1585 (b) to perform all of a seller's sales and use tax functions for an agreement sales and

1586 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's

1587 own purchases.

1588 (12) (a) Subject to Subsection (12)(b), "clothing" means all human wearing apparel
1589 suitable for general use.

1590 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1591 commission shall make rules:

1592 (i) listing the items that constitute "clothing"; and

1593 (ii) that are consistent with the list of items that constitute "clothing" under the
1594 agreement.

1595 (13) (a) For purposes of Subsection 59-12-104(42), "coin-operated amusement device"
1596 means:

1597 (i) a coin-operated amusement, skill, or ride device;

1598 (ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens; and

1599 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
1600 arcade machine, and a mechanical or electronic skill game or ride.

1601 (b) For purposes of Subsection 59-12-104(42), "coin-operated amusement device" does
1602 not mean a coin-operated amusement device possessing a coinage mechanism that:

1603 (i) accepts and registers multiple denominations of coins; and

1604 (ii) allows the seller to collect the sales and use tax at the time an amusement device is
1605 activated and operated by a person inserting coins into the device.

1606 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other

1607 fuels that does not constitute industrial use under Subsection (34) or residential use under
1608 Subsection (63).

1609 (15) (a) "Common carrier" means a person engaged in or transacting the business of
1610 transporting passengers, freight, merchandise, or other property for hire within this state.

1611 (b) (i) "Common carrier" does not include a person who, at the time the person is
1612 traveling to or from that person's place of employment, transports a passenger to or from the
1613 passenger's place of employment.

1614 (ii) For purposes of Subsection (15)(b)(i), in accordance with Title 63, Chapter 46a,
1615 Utah Administrative Rulemaking Act, the commission may make rules defining what
1616 constitutes a person's place of employment.

1617 (16) "Component part" includes:

1618 (a) poultry, dairy, and other livestock feed, and their components;

1619 (b) baling ties and twine used in the baling of hay and straw;

1620 (c) fuel used for providing temperature control of orchards and commercial
1621 greenhouses doing a majority of their business in wholesale sales, and for providing power for
1622 off-highway type farm machinery; and

1623 (d) feed, seeds, and seedlings.

1624 (17) "Computer" means an electronic device that accepts information:

1625 (a) (i) in digital form; or

1626 (ii) in a form similar to digital form; and

1627 (b) manipulates that information for a result based on a sequence of instructions.

1628 (18) "Computer software" means a set of coded instructions designed to cause:

1629 (a) a computer to perform a task; or

1630 (b) automatic data processing equipment to perform a task.

1631 (19) "Construction materials" means any tangible personal property that will be
1632 converted into real property.

1633 (20) "Delivered electronically" means delivered to a purchaser by means other than
1634 tangible storage media.

1635 (21) (a) "Delivery charge" means a charge:

1636 (i) by a seller of:

1637 (A) tangible personal property; or

- 1638 (B) services; and
- 1639 (ii) for preparation and delivery of the tangible personal property or services described
- 1640 in Subsection (21)(a)(i) to a location designated by the purchaser.
- 1641 (b) "Delivery charge" includes a charge for the following:
- 1642 (i) transportation;
- 1643 (ii) shipping;
- 1644 (iii) postage;
- 1645 (iv) handling;
- 1646 (v) crating; or
- 1647 (vi) packing.
- 1648 (22) "Dietary supplement" means a product, other than tobacco, that:
- 1649 (a) is intended to supplement the diet;
- 1650 (b) contains one or more of the following dietary ingredients:
- 1651 (i) a vitamin;
- 1652 (ii) a mineral;
- 1653 (iii) an herb or other botanical;
- 1654 (iv) an amino acid;
- 1655 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 1656 dietary intake; or
- 1657 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 1658 described in Subsections (22)(b)(i) through (v);
- 1659 (c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:
- 1660 (A) tablet form;
- 1661 (B) capsule form;
- 1662 (C) powder form;
- 1663 (D) softgel form;
- 1664 (E) gelcap form; or
- 1665 (F) liquid form; or
- 1666 (ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in
- 1667 a form described in Subsections (22)(c)(i)(A) through (F), is not represented:
- 1668 (A) as conventional food; and

- 1669 (B) for use as a sole item of:
- 1670 (I) a meal; or
- 1671 (II) the diet; and
- 1672 (d) is required to be labeled as a dietary supplement:
- 1673 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 1674 (ii) as required by 21 C.F.R. Sec. 101.36.
- 1675 (23) (a) "Direct mail" means printed material delivered or distributed by United States
- 1676 mail or other delivery service:
- 1677 (i) to:
- 1678 (A) a mass audience; or
- 1679 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 1680 (ii) if the cost of the printed material is not billed directly to the recipients.
- 1681 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 1682 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 1683 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 1684 single address.
- 1685 (24) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 1686 compound, substance, or preparation that is:
- 1687 (i) recognized in:
- 1688 (A) the official United States Pharmacopoeia;
- 1689 (B) the official Homeopathic Pharmacopoeia of the United States;
- 1690 (C) the official National Formulary; or
- 1691 (D) a supplement to a publication listed in Subsections (24)(a)(i)(A) through (C);
- 1692 (ii) intended for use in the:
- 1693 (A) diagnosis of disease;
- 1694 (B) cure of disease;
- 1695 (C) mitigation of disease;
- 1696 (D) treatment of disease; or
- 1697 (E) prevention of disease; or
- 1698 (iii) intended to affect:
- 1699 (A) the structure of the body; or

- 1700 (B) any function of the body.
- 1701 (b) "Drug" does not include:
- 1702 (i) food and food ingredients;
- 1703 (ii) a dietary supplement;
- 1704 (iii) an alcoholic beverage; or
- 1705 (iv) a prosthetic device.
- 1706 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means
- 1707 equipment that:
- 1708 (i) can withstand repeated use;
- 1709 (ii) is primarily and customarily used to serve a medical purpose;
- 1710 (iii) generally is not useful to a person in the absence of illness or injury;
- 1711 (iv) is not worn in or on the body;
- 1712 (v) is listed as eligible for payment under:
- 1713 (A) Title XVIII of the federal Social Security Act; or
- 1714 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 1715 Act; and
- 1716 (vi) is used for home use only.
- 1717 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 1718 equipment described in Subsection (25)(a).
- 1719 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include
- 1720 mobility enhancing equipment.
- 1721 (26) "Electronic" means:
- 1722 (a) relating to technology; and
- 1723 (b) having:
- 1724 (i) electrical capabilities;
- 1725 (ii) digital capabilities;
- 1726 (iii) magnetic capabilities;
- 1727 (iv) wireless capabilities;
- 1728 (v) optical capabilities;
- 1729 (vi) electromagnetic capabilities; or
- 1730 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).

- 1731 (27) (a) "Food and food ingredients" means substances:
- 1732 (i) regardless of whether the substances are in:
- 1733 (A) liquid form;
- 1734 (B) concentrated form;
- 1735 (C) solid form;
- 1736 (D) frozen form;
- 1737 (E) dried form; or
- 1738 (F) dehydrated form; and
- 1739 (ii) that are:
- 1740 (A) sold for:
- 1741 (I) ingestion by humans; or
- 1742 (II) chewing by humans; and
- 1743 (B) consumed for the substance's:
- 1744 (I) taste; or
- 1745 (II) nutritional value.
- 1746 (b) "Food and food ingredients" does not include:
- 1747 (i) an alcoholic beverage;
- 1748 (ii) tobacco; or
- 1749 (iii) prepared food.
- 1750 (28) (a) "Fundraising sales" means sales:
- 1751 (i) (A) made by a school; or
- 1752 (B) made by a school student;
- 1753 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 1754 materials, or provide transportation; and
- 1755 (iii) that are part of an officially sanctioned school activity.
- 1756 (b) For purposes of Subsection (28)(a)(iii), "officially sanctioned school activity"
- 1757 means a school activity:
- 1758 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 1759 district governing the authorization and supervision of fundraising activities;
- 1760 (ii) that does not directly or indirectly compensate an individual teacher or other
- 1761 educational personnel by direct payment, commissions, or payment in kind; and

- 1762 (iii) the net or gross revenues from which are deposited in a dedicated account
1763 controlled by the school or school district.
- 1764 (29) "Geothermal energy" means energy contained in heat that continuously flows
1765 outward from the earth that is used as the sole source of energy to produce electricity.
- 1766 (30) "Governing board of the agreement" means the governing board of the agreement
1767 that is:
- 1768 (a) authorized to administer the agreement; and
1769 (b) established in accordance with the agreement.
- 1770 (31) (a) "Hearing aid" means:
- 1771 (i) an instrument or device having an electronic component that is designed to:
1772 (A) (I) improve impaired human hearing; or
1773 (II) correct impaired human hearing; and
1774 (B) (I) be worn in the human ear; or
1775 (II) affixed behind the human ear;
- 1776 (ii) an instrument or device that is surgically implanted into the cochlea; or
1777 (iii) a telephone amplifying device.
- 1778 (b) "Hearing aid" does not include:
- 1779 (i) except as provided in Subsection (31)(a)(i)(B) or (31)(a)(ii), an instrument or device
1780 having an electronic component that is designed to be worn on the body;
- 1781 (ii) except as provided in Subsection (31)(a)(iii), an assistive listening device or system
1782 designed to be used by one individual, including:
- 1783 (A) a personal amplifying system;
1784 (B) a personal FM system;
1785 (C) a television listening system; or
1786 (D) a device or system similar to a device or system described in Subsections
1787 (31)(b)(ii)(A) through (C); or
- 1788 (iii) an assistive listening device or system designed to be used by more than one
1789 individual, including:
- 1790 (A) a device or system installed in:
1791 (I) an auditorium;
1792 (II) a church;

- 1793 (III) a conference room;
- 1794 (IV) a synagogue; or
- 1795 (V) a theater; or
- 1796 (B) a device or system similar to a device or system described in Subsections
- 1797 (31)(b)(iii)(A)(I) through (V).
- 1798 (32) (a) "Hearing aid accessory" means a hearing aid:
- 1799 (i) component;
- 1800 (ii) attachment; or
- 1801 (iii) accessory.
- 1802 (b) "Hearing aid accessory" includes:
- 1803 (i) a hearing aid neck loop;
- 1804 (ii) a hearing aid cord;
- 1805 (iii) a hearing aid ear mold;
- 1806 (iv) hearing aid tubing;
- 1807 (v) a hearing aid ear hook; or
- 1808 (vi) a hearing aid remote control.
- 1809 (c) "Hearing aid accessory" does not include:
- 1810 (i) a component, attachment, or accessory designed to be used only with an:
- 1811 (A) instrument or device described in Subsection (31)(b)(i); or
- 1812 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or
- 1813 (ii) a hearing aid battery.
- 1814 (33) "Hydroelectric energy" means water used as the sole source of energy to produce
- 1815 electricity.
- 1816 (34) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 1817 other fuels:
- 1818 (a) in mining or extraction of minerals;
- 1819 (b) in agricultural operations to produce an agricultural product up to the time of
- 1820 harvest or placing the agricultural product into a storage facility, including:
- 1821 (i) commercial greenhouses;
- 1822 (ii) irrigation pumps;
- 1823 (iii) farm machinery;

1824 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
1825 registered under Title 41, Chapter 1a, Part 2, Registration; and

1826 (v) other farming activities;

1827 (c) in manufacturing tangible personal property at an establishment described in SIC
1828 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
1829 Executive Office of the President, Office of Management and Budget; or

1830 (d) by a scrap recycler if:

1831 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
1832 one or more of the following items into prepared grades of processed materials for use in new
1833 products:

1834 (A) iron;

1835 (B) steel;

1836 (C) nonferrous metal;

1837 (D) paper;

1838 (E) glass;

1839 (F) plastic;

1840 (G) textile; or

1841 (H) rubber; and

1842 (ii) the new products under Subsection (34)(d)(i) would otherwise be made with
1843 nonrecycled materials.

1844 (35) (a) "Lease" or "rental" means a transfer of possession or control of tangible
1845 personal property for:

1846 (i) (A) a fixed term; or

1847 (B) an indeterminate term; and

1848 (ii) consideration.

1849 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
1850 amount of consideration may be increased or decreased by reference to the amount realized
1851 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
1852 Code.

1853 (c) "Lease" or "rental" does not include:

1854 (i) a transfer of possession or control of property under a security agreement or

- 1855 deferred payment plan that requires the transfer of title upon completion of the required
1856 payments;
- 1857 (ii) a transfer of possession or control of property under an agreement:
1858 (A) that requires the transfer of title upon completion of required payments; and
1859 (B) in which the payment of an option price does not exceed the greater of:
1860 (I) \$100; or
1861 (II) 1% of the total required payments; or
1862 (iii) providing tangible personal property along with an operator for a fixed period of
1863 time or an indeterminate period of time if the operator is necessary for equipment to perform as
1864 designed.
- 1865 (d) For purposes of Subsection (35)(c)(iii), an operator is necessary for equipment to
1866 perform as designed if the operator's duties exceed the:
- 1867 (i) set-up of tangible personal property;
1868 (ii) maintenance of tangible personal property; or
1869 (iii) inspection of tangible personal property.
- 1870 (36) "Load and leave" means delivery to a purchaser by use of a tangible storage media
1871 if the tangible storage media is not physically transferred to the purchaser.
- 1872 (37) "Local taxing jurisdiction" means a:
1873 (a) county that is authorized to impose an agreement sales and use tax;
1874 (b) city that is authorized to impose an agreement sales and use tax; or
1875 (c) town that is authorized to impose an agreement sales and use tax.
- 1876 (38) "Manufactured home" is as defined in Section ~~[58-56-3]~~ 61-2f-103.
- 1877 (39) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
1878 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
1879 Industrial Classification Manual of the federal Executive Office of the President, Office of
1880 Management and Budget; or
1881 (b) a scrap recycler if:
1882 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
1883 one or more of the following items into prepared grades of processed materials for use in new
1884 products:
1885 (A) iron;

- 1886 (B) steel;
- 1887 (C) nonferrous metal;
- 1888 (D) paper;
- 1889 (E) glass;
- 1890 (F) plastic;
- 1891 (G) textile; or
- 1892 (H) rubber; and
- 1893 (ii) the new products under Subsection (39)(b)(i) would otherwise be made with
- 1894 nonrecycled materials.
- 1895 (40) "Mobile home" is as defined in Section [~~58-56-3~~] 61-2f-103.
- 1896 (41) "Mobile telecommunications service" is as defined in the Mobile
- 1897 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 1898 (42) (a) Except as provided in Subsection (42)(c), "mobility enhancing equipment"
- 1899 means equipment that is:
- 1900 (i) primarily and customarily used to provide or increase the ability to move from one
- 1901 place to another;
- 1902 (ii) appropriate for use in a:
- 1903 (A) home; or
- 1904 (B) motor vehicle;
- 1905 (iii) not generally used by persons with normal mobility; and
- 1906 (iv) listed as eligible for payment under:
- 1907 (A) Title XVIII of the federal Social Security Act; or
- 1908 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 1909 Act.
- 1910 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
- 1911 the equipment described in Subsection (42)(a).
- 1912 (c) Notwithstanding Subsection (42)(a), "mobility enhancing equipment" does not
- 1913 include:
- 1914 (i) a motor vehicle;
- 1915 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
- 1916 vehicle manufacturer;

- 1917 (iii) durable medical equipment; or
1918 (iv) a prosthetic device.
- 1919 (43) "Model 1 seller" means a seller that has selected a certified service provider as the
1920 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
1921 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
1922 seller's own purchases.
- 1923 (44) "Model 2 seller" means a seller that:
- 1924 (a) except as provided in Subsection (44)(b), has selected a certified automated system
1925 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 1926 (b) notwithstanding Subsection (44)(a), retains responsibility for remitting all of the
1927 sales tax:
- 1928 (i) collected by the seller; and
1929 (ii) to the appropriate local taxing jurisdiction.
- 1930 (45) (a) Subject to Subsection (45)(b), "model 3 seller" means a seller that has:
- 1931 (i) sales in at least five states that are members of the agreement;
1932 (ii) total annual sales revenues of at least \$500,000,000;
1933 (iii) a proprietary system that calculates the amount of tax:
- 1934 (A) for an agreement sales and use tax; and
1935 (B) due to each local taxing jurisdiction; and
1936 (iv) entered into a performance agreement with the governing board of the agreement.
- 1937 (b) For purposes of Subsection (45)(a), "model 3 seller" includes an affiliated group of
1938 sellers using the same proprietary system.
- 1939 (46) "Modular home" means a modular unit as defined in Section ~~[58-56-3]~~ 61-2f-103.
- 1940 (47) "Motor vehicle" is as defined in Section 41-1a-102.
- 1941 (48) (a) "Other fuels" means products that burn independently to produce heat or
1942 energy.
- 1943 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
1944 personal property.
- 1945 (49) "Person" includes any individual, firm, partnership, joint venture, association,
1946 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
1947 municipality, district, or other local governmental entity of the state, or any group or

1948 combination acting as a unit.

1949 (50) "Place of primary use":

1950 (a) for telephone service other than mobile telecommunications service, means the
1951 street address representative of where the purchaser's use of the telephone service primarily
1952 occurs, which shall be:

1953 (i) the residential street address of the purchaser; or

1954 (ii) the primary business street address of the purchaser; or

1955 (b) for mobile telecommunications service, is as defined in the Mobile

1956 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1957 (51) "Postproduction" means an activity related to the finishing or duplication of a
1958 medium described in Subsection 59-12-104(60)(a).

1959 (52) (a) "Prepared food" means:

1960 (i) food:

1961 (A) sold in a heated state; or

1962 (B) heated by a seller;

1963 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
1964 item; or

1965 (iii) except as provided in Subsection (52)(c), food sold with an eating utensil provided
1966 by the seller, including a:

1967 (A) plate;

1968 (B) knife;

1969 (C) fork;

1970 (D) spoon;

1971 (E) glass;

1972 (F) cup;

1973 (G) napkin; or

1974 (H) straw.

1975 (b) "Prepared food" does not include:

1976 (i) food that a seller only:

1977 (A) cuts;

1978 (B) repackages; or

- 1979 (C) pasteurizes; or
- 1980 (ii) (A) the following:
- 1981 (I) raw egg;
- 1982 (II) raw fish;
- 1983 (III) raw meat;
- 1984 (IV) raw poultry; or
- 1985 (V) a food containing an item described in Subsections (52)(b)(ii)(A)(I) through (IV);
- 1986 and
- 1987 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 1988 Food and Drug Administration's Food Code that a consumer cook the items described in
- 1989 Subsection (52)(b)(ii)(A) to prevent food borne illness.
- 1990 (c) Notwithstanding Subsection (52)(a)(iii), an eating utensil provided by the seller
- 1991 does not include the following used to transport the food:
- 1992 (i) a container; or
- 1993 (ii) packaging.
- 1994 (53) "Prescription" means an order, formula, or recipe that is issued:
- 1995 (a) (i) orally;
- 1996 (ii) in writing;
- 1997 (iii) electronically; or
- 1998 (iv) by any other manner of transmission; and
- 1999 (b) by a licensed practitioner authorized by the laws of a state.
- 2000 (54) (a) Except as provided in Subsection (54)(b)(ii) or (iii), "prewritten computer
- 2001 software" means computer software that is not designed and developed:
- 2002 (i) by the author or other creator of the computer software; and
- 2003 (ii) to the specifications of a specific purchaser.
- 2004 (b) "Prewritten computer software" includes:
- 2005 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
- 2006 software is not designed and developed:
- 2007 (A) by the author or other creator of the computer software; and
- 2008 (B) to the specifications of a specific purchaser;
- 2009 (ii) notwithstanding Subsection (54)(a), computer software designed and developed by

2010 the author or other creator of the computer software to the specifications of a specific purchaser
2011 if the computer software is sold to a person other than the purchaser; or

2012 (iii) notwithstanding Subsection (54)(a) and except as provided in Subsection (54)(c),
2013 prewritten computer software or a prewritten portion of prewritten computer software:

2014 (A) that is modified or enhanced to any degree; and

2015 (B) if the modification or enhancement described in Subsection (54)(b)(iii)(A) is
2016 designed and developed to the specifications of a specific purchaser.

2017 (c) Notwithstanding Subsection (54)(b)(iii), "prewritten computer software" does not
2018 include a modification or enhancement described in Subsection (54)(b)(iii) if the charges for
2019 the modification or enhancement are:

2020 (i) reasonable; and

2021 (ii) separately stated on the invoice or other statement of price provided to the
2022 purchaser.

2023 (55) (a) "Prosthetic device" means a device that is:

2024 (i) worn on or in the body to:

2025 (A) artificially replace a missing portion of the body;

2026 (B) prevent or correct a physical deformity or physical malfunction; or

2027 (C) support a weak or deformed portion of the body; and

2028 (ii) listed as eligible for payment under:

2029 (A) Title XVIII of the federal Social Security Act; or

2030 (B) the state plan for medical assistance under Title XIX of the federal Social Security
2031 Act.

2032 (b) "Prosthetic device" includes:

2033 (i) parts used in the repairs or renovation of a prosthetic device; or

2034 (ii) replacement parts for a prosthetic device.

2035 (c) "Prosthetic device" does not include:

2036 (i) corrective eyeglasses;

2037 (ii) contact lenses;

2038 (iii) hearing aids; or

2039 (iv) dental prostheses.

2040 (56) (a) "Protective equipment" means an item:

- 2041 (i) for human wear; and
- 2042 (ii) that is:
- 2043 (A) designed as protection:
- 2044 (I) to the wearer against injury or disease; or
- 2045 (II) against damage or injury of other persons or property; and
- 2046 (B) not suitable for general use.
- 2047 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 2048 commission shall make rules:
- 2049 (i) listing the items that constitute "protective equipment"; and
- 2050 (ii) that are consistent with the list of items that constitute "protective equipment"
- 2051 under the agreement.
- 2052 (57) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 2053 (i) valued in money; and
- 2054 (ii) for which tangible personal property or services are:
- 2055 (A) sold;
- 2056 (B) leased; or
- 2057 (C) rented.
- 2058 (b) "Purchase price" and "sales price" include:
- 2059 (i) the seller's cost of the tangible personal property or services sold;
- 2060 (ii) expenses of the seller, including:
- 2061 (A) the cost of materials used;
- 2062 (B) a labor cost;
- 2063 (C) a service cost;
- 2064 (D) interest;
- 2065 (E) a loss;
- 2066 (F) the cost of transportation to the seller; or
- 2067 (G) a tax imposed on the seller;
- 2068 (iii) a charge by the seller for any service necessary to complete the sale;
- 2069 (iv) a delivery charge; or
- 2070 (v) an installation charge.
- 2071 (c) "Purchase price" and "sales price" do not include:

- 2072 (i) a discount:
- 2073 (A) in a form including:
- 2074 (I) cash;
- 2075 (II) term; or
- 2076 (III) coupon;
- 2077 (B) that is allowed by a seller;
- 2078 (C) taken by a purchaser on a sale; and
- 2079 (D) that is not reimbursed by a third party; or
- 2080 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 2081 provided to the purchaser:
- 2082 (A) the amount of a trade-in;
- 2083 (B) the following from credit extended on the sale of tangible personal property or
- 2084 services:
- 2085 (I) interest charges;
- 2086 (II) financing charges; or
- 2087 (III) carrying charges; or
- 2088 (C) a tax or fee legally imposed directly on the consumer.
- 2089 (58) "Purchaser" means a person to whom:
- 2090 (a) a sale of tangible personal property is made; or
- 2091 (b) a service is furnished.
- 2092 (59) "Regularly rented" means:
- 2093 (a) rented to a guest for value three or more times during a calendar year; or
- 2094 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 2095 value.
- 2096 (60) "Renewable energy" means:
- 2097 (a) biomass energy;
- 2098 (b) hydroelectric energy;
- 2099 (c) geothermal energy;
- 2100 (d) solar energy; or
- 2101 (e) wind energy.
- 2102 (61) (a) "Renewable energy production facility" means a facility that:

- 2103 (i) uses renewable energy to produce electricity; and
2104 (ii) has a production capacity of 20 kilowatts or greater.
- 2105 (b) A facility is a renewable energy production facility regardless of whether the
2106 facility is:
- 2107 (i) connected to an electric grid; or
2108 (ii) located on the premises of an electricity consumer.
- 2109 (62) "Rental" is as defined in Subsection (35).
- 2110 (63) "Residential use" means the use in or around a home, apartment building, sleeping
2111 quarters, and similar facilities or accommodations.
- 2112 (64) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
2113 than:
- 2114 (a) resale;
2115 (b) sublease; or
2116 (c) subrent.
- 2117 (65) (a) "Retailer" means any person engaged in a regularly organized business in
2118 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
2119 who is selling to the user or consumer and not for resale.
- 2120 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
2121 engaged in the business of selling to users or consumers within the state.
- 2122 (66) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
2123 otherwise, in any manner, of tangible personal property or any other taxable transaction under
2124 Subsection 59-12-103(1), for consideration.
- 2125 (b) "Sale" includes:
- 2126 (i) installment and credit sales;
2127 (ii) any closed transaction constituting a sale;
2128 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
2129 chapter;
- 2130 (iv) any transaction if the possession of property is transferred but the seller retains the
2131 title as security for the payment of the price; and
- 2132 (v) any transaction under which right to possession, operation, or use of any article of
2133 tangible personal property is granted under a lease or contract and the transfer of possession

2134 would be taxable if an outright sale were made.
2135 (67) "Sale at retail" is as defined in Subsection (64).
2136 (68) "Sale-leaseback transaction" means a transaction by which title to tangible
2137 personal property that is subject to a tax under this chapter is transferred:
2138 (a) by a purchaser-lessee;
2139 (b) to a lessor;
2140 (c) for consideration; and
2141 (d) if:
2142 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
2143 of the tangible personal property;
2144 (ii) the sale of the tangible personal property to the lessor is intended as a form of
2145 financing:
2146 (A) for the property; and
2147 (B) to the purchaser-lessee; and
2148 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
2149 is required to:
2150 (A) capitalize the property for financial reporting purposes; and
2151 (B) account for the lease payments as payments made under a financing arrangement.
2152 (69) "Sales price" is as defined in Subsection (57).
2153 (70) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
2154 amounts charged by a school:
2155 (i) sales that are directly related to the school's educational functions or activities
2156 including:
2157 (A) the sale of:
2158 (I) textbooks;
2159 (II) textbook fees;
2160 (III) laboratory fees;
2161 (IV) laboratory supplies; or
2162 (V) safety equipment;
2163 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
2164 that:

- 2165 (I) a student is specifically required to wear as a condition of participation in a
2166 school-related event or school-related activity; and
- 2167 (II) is not readily adaptable to general or continued usage to the extent that it takes the
2168 place of ordinary clothing;
- 2169 (C) sales of the following if the net or gross revenues generated by the sales are
2170 deposited into a school district fund or school fund dedicated to school meals:
- 2171 (I) food and food ingredients; or
- 2172 (II) prepared food; or
- 2173 (D) transportation charges for official school activities; or
- 2174 (ii) amounts paid to or amounts charged by a school for admission to a school-related
2175 event or school-related activity.
- 2176 (b) "Sales relating to schools" does not include:
- 2177 (i) bookstore sales of items that are not educational materials or supplies;
- 2178 (ii) except as provided in Subsection (70)(a)(i)(B):
- 2179 (A) clothing;
- 2180 (B) clothing accessories or equipment;
- 2181 (C) protective equipment; or
- 2182 (D) sports or recreational equipment; or
- 2183 (iii) amounts paid to or amounts charged by a school for admission to a school-related
2184 event or school-related activity if the amounts paid or charged are passed through to a person:
- 2185 (A) other than a:
- 2186 (I) school;
- 2187 (II) nonprofit organization authorized by a school board or a governing body of a
2188 private school to organize and direct a competitive secondary school activity; or
- 2189 (III) nonprofit association authorized by a school board or a governing body of a
2190 private school to organize and direct a competitive secondary school activity; and
- 2191 (B) that is required to collect sales and use taxes under this chapter.
- 2192 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
2193 commission may make rules defining the term "passed through."
- 2194 (71) For purposes of this section and Section 59-12-104, "school" means:
- 2195 (a) an elementary school or a secondary school that:

- 2196 (i) is a:
- 2197 (A) public school; or
- 2198 (B) private school; and
- 2199 (ii) provides instruction for one or more grades kindergarten through 12; or
- 2200 (b) a public school district.
- 2201 (72) "Seller" means a person that makes a sale, lease, or rental of:
- 2202 (a) tangible personal property; or
- 2203 (b) a service.
- 2204 (73) (a) "Semiconductor fabricating or processing materials" means tangible personal
- 2205 property:
- 2206 (i) used primarily in the process of:
- 2207 (A) (I) manufacturing a semiconductor; or
- 2208 (II) fabricating a semiconductor; or
- 2209 (B) maintaining an environment suitable for a semiconductor; or
- 2210 (ii) consumed primarily in the process of:
- 2211 (A) (I) manufacturing a semiconductor; or
- 2212 (II) fabricating a semiconductor; or
- 2213 (B) maintaining an environment suitable for a semiconductor.
- 2214 (b) "Semiconductor fabricating or processing materials" includes:
- 2215 (i) parts used in the repairs or renovations of tangible personal property described in
- 2216 Subsection (73)(a); or
- 2217 (ii) a chemical, catalyst, or other material used to:
- 2218 (A) produce or induce in a semiconductor a:
- 2219 (I) chemical change; or
- 2220 (II) physical change;
- 2221 (B) remove impurities from a semiconductor; or
- 2222 (C) improve the marketable condition of a semiconductor.
- 2223 (74) "Senior citizen center" means a facility having the primary purpose of providing
- 2224 services to the aged as defined in Section 62A-3-101.
- 2225 (75) "Simplified electronic return" means the electronic return:
- 2226 (a) described in Section 318(C) of the agreement; and

- 2227 (b) approved by the governing board of the agreement.
- 2228 (76) "Solar energy" means the sun used as the sole source of energy for producing
- 2229 electricity.
- 2230 (77) (a) "Sports or recreational equipment" means an item:
- 2231 (i) designed for human use; and
- 2232 (ii) that is:
- 2233 (A) worn in conjunction with:
- 2234 (I) an athletic activity; or
- 2235 (II) a recreational activity; and
- 2236 (B) not suitable for general use.
- 2237 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 2238 commission shall make rules:
- 2239 (i) listing the items that constitute "sports or recreational equipment"; and
- 2240 (ii) that are consistent with the list of items that constitute "sports or recreational
- 2241 equipment" under the agreement.
- 2242 (78) "State" means the state of Utah, its departments, and agencies.
- 2243 (79) "Storage" means any keeping or retention of tangible personal property or any
- 2244 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 2245 sale in the regular course of business.
- 2246 (80) (a) "Tangible personal property" means personal property that:
- 2247 (i) may be:
- 2248 (A) seen;
- 2249 (B) weighed;
- 2250 (C) measured;
- 2251 (D) felt; or
- 2252 (E) touched; or
- 2253 (ii) is in any manner perceptible to the senses.
- 2254 (b) "Tangible personal property" includes:
- 2255 (i) electricity;
- 2256 (ii) water;
- 2257 (iii) gas;

- 2258 (iv) steam; or
- 2259 (v) prewritten computer software.
- 2260 (81) (a) "Telephone service" means a two-way transmission:
- 2261 (i) by:
- 2262 (A) wire;
- 2263 (B) radio;
- 2264 (C) lightwave; or
- 2265 (D) other electromagnetic means; and
- 2266 (ii) of one or more of the following:
- 2267 (A) a sign;
- 2268 (B) a signal;
- 2269 (C) writing;
- 2270 (D) an image;
- 2271 (E) sound;
- 2272 (F) a message;
- 2273 (G) data; or
- 2274 (H) other information of any nature.
- 2275 (b) "Telephone service" includes:
- 2276 (i) mobile telecommunications service;
- 2277 (ii) private communications service; or
- 2278 (iii) automated digital telephone answering service.
- 2279 (c) "Telephone service" does not include a service or a transaction that a state or a
- 2280 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 2281 Tax Freedom Act, Pub. L. No. 105-277.
- 2282 (82) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 2283 (a) if the location described in this Subsection (82)(a) is known, the location of the
- 2284 telephone service equipment:
- 2285 (i) to which a call is charged; and
- 2286 (ii) from which the call originates or terminates;
- 2287 (b) if the location described in Subsection (82)(a) is not known but the location
- 2288 described in this Subsection (82)(b) is known, the location of the origination point of the signal

2289 of the telephone service first identified by:

2290 (i) the telecommunications system of the seller; or

2291 (ii) if the system used to transport the signal is not that of the seller, information
2292 received by the seller from its service provider; or

2293 (c) if the locations described in Subsection (82)(a) or (b) are not known, the location of
2294 a purchaser's primary place of use.

2295 (83) (a) "Telephone service provider" means a person that:

2296 (i) owns, controls, operates, or manages a telephone service; and

2297 (ii) engages in an activity described in Subsection (83)(a)(i) for the shared use with or
2298 resale to any person of the telephone service.

2299 (b) A person described in Subsection (83)(a) is a telephone service provider whether or
2300 not the Public Service Commission of Utah regulates:

2301 (i) that person; or

2302 (ii) the telephone service that the person owns, controls, operates, or manages.

2303 (84) "Tobacco" means:

2304 (a) a cigarette;

2305 (b) a cigar;

2306 (c) chewing tobacco;

2307 (d) pipe tobacco; or

2308 (e) any other item that contains tobacco.

2309 (85) (a) "Use" means the exercise of any right or power over tangible personal property
2310 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item,
2311 or service.

2312 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
2313 the regular course of business and held for resale.

2314 (86) (a) Subject to Subsection (86)(b), "vehicle" means the following that are required
2315 to be titled, registered, or titled and registered:

2316 (i) an aircraft as defined in Section 72-10-102;

2317 (ii) a vehicle as defined in Section 41-1a-102;

2318 (iii) an off-highway vehicle as defined in Section 41-22-2; or

2319 (iv) a vessel as defined in Section 41-1a-102.

2320 (b) For purposes of Subsection 59-12-104(35) only, "vehicle" includes:
2321 (i) a vehicle described in Subsection (86)(a); or
2322 (ii) (A) a locomotive;
2323 (B) a freight car;
2324 (C) railroad work equipment; or
2325 (D) other railroad rolling stock.
2326 (87) "Vehicle dealer" means a person engaged in the business of buying, selling, or
2327 exchanging a vehicle as defined in Subsection (86).

2328 (88) (a) Except as provided in Subsection (88)(b), "waste energy facility" means a
2329 facility that generates electricity:

2330 (i) using as the primary source of energy waste materials that would be placed in a
2331 landfill or refuse pit if it were not used to generate electricity, including:

2332 (A) tires;

2333 (B) waste coal; or

2334 (C) oil shale; and

2335 (ii) in amounts greater than actually required for the operation of the facility.

2336 (b) "Waste energy facility" does not include a facility that incinerates:

2337 (i) municipal solid waste;

2338 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

2339 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

2340 (89) "Watercraft" means a vessel as defined in Section 73-18-2.

2341 (90) "Wind energy" means wind used as the sole source of energy to produce
2342 electricity.

2343 (91) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
2344 location by the United States Postal Service.

2345 Section 31. Section **61-2e-101**, which is renumbered from Section 58-55-101 is
2346 renumbered and amended to read:

2347 **CHAPTER 2e. UTAH CONSTRUCTION TRADES LICENSING ACT**

2348 **Part 1. General Provisions**

2349 **[58-55-101]. 61-2e-101. Title.**

2350 This chapter is known as the "Utah Construction Trades Licensing Act."

2351 Section 32. Section **61-2e-102**, which is renumbered from Section 58-55-102 is
2352 renumbered and amended to read:

2353 ~~[58-55-102]~~. **61-2e-102. Definitions.**

2354 In addition to the definitions in Section 58-1-102, as used in this chapter:

2355 (1) (a) "Alarm business or company" means a person engaged in the sale, installation,
2356 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system,
2357 except as provided in Subsection (1)(b).

2358 (b) "Alarm business or company" does not include:

2359 (i) a person engaged in the manufacture and sale of alarm systems when:

2360 (A) that person is not engaged in the installation, maintenance, alteration, repair,
2361 replacement, servicing, or monitoring of alarm systems[;]; and

2362 (B) the manufacture or sale;

2363 (I) occurs only at a place of business established by the person engaged in the
2364 manufacture or sale; and

2365 (II) does not involve site visits at the place or intended place of installation of an alarm
2366 system; or

2367 (ii) an owner of an alarm system, or an employee of the owner of an alarm system who
2368 is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring
2369 of the alarm system owned by that owner.

2370 (2) "Alarm company agent" means any individual employed within this state by a
2371 person engaged in the alarm business.

2372 (3) "Alarm system" means equipment and devices assembled for the purpose of:

2373 (a) detecting and signaling unauthorized intrusion or entry into or onto certain
2374 premises; or

2375 (b) signaling a robbery or attempted robbery on protected premises.

2376 (4) "Apprentice electrician" means a person licensed under this chapter as an
2377 apprentice electrician who is learning the electrical trade under approved supervision of:

2378 (a) a master electrician[;];

2379 (b) a residential master electrician[;];

2380 (c) a journeyman electrician[;]; or

2381 (d) a residential journeyman electrician.

2382 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice
2383 plumber who is learning the plumbing trade under approved supervision of a journeyman
2384 plumber.

2385 (6) "Approved supervision" means the immediate supervision of apprentices by
2386 qualified licensed electricians or plumbers as a part of a planned program of training.

2387 (7) "Board" means one of the following created in Section 61-2e-201:

2388 (a) the Electrician Licensing Board[;];

2389 (b) Alarm System Security and Licensing Board[;]; or

2390 (c) Plumbers Licensing Board [~~created in Section 58-55-201~~].

2391 (8) "Combustion system" means an assembly consisting of:

2392 (a) piping and components with a means for conveying, either continuously or
2393 intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the
2394 appliance;

2395 (b) the electric control and combustion air supply and venting systems; and

2396 (c) components intended to achieve control of quantity, flow, and pressure.

2397 (9) "Commission" means the Construction Services Commission created under Section
2398 [~~58-55-103~~] 61-2e-103.

2399 (10) "Construction trade" means any trade or occupation involving:

2400 (a) construction, alteration, remodeling, repairing, wrecking or demolition, addition to,
2401 or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or
2402 other project, development, or improvement to other than personal property; or

2403 (b) installation or repair of a residential or commercial natural gas appliance or
2404 combustion system.

2405 (11) "Construction trades instructor" means a person licensed under this chapter to
2406 teach one or more construction trades in both a classroom and project environment, where a
2407 project is intended for sale to or use by the public and is completed under the direction of the
2408 instructor, who has no economic interest in the project.

2409 (12) (a) "Contractor" means any person who for compensation other than wages as an
2410 employee undertakes any work in the construction, plumbing, or electrical trade for which
2411 licensure is required under this chapter and includes:

2412 (i) a person who builds;

2413 (A) any structure on [~~his~~] the person's own property for the purpose of sale; or [~~who~~
 2414 ~~builds~~]

2415 (B) any structure intended for public use on [~~his~~] the person's own property;

2416 (ii) any person who represents himself to be a contractor by advertising or any other
 2417 means;

2418 (iii) any person engaged as a maintenance person, other than an employee, who
 2419 regularly engages in activities set forth under the definition of "construction trade";

2420 (iv) any person engaged in any construction trade for which licensure is required under
 2421 this chapter; or

2422 (v) a construction manager who performs management and counseling services on a
 2423 construction project for a fee.

2424 (b) "Contractor" does not include an alarm company or alarm company agent.

2425 (13) "Department" means the Department of Commerce.

2426 (14) "Director" means the director of the Division of Real Estate.

2427 (15) "Division" means the Division of Real Estate.

2428 [~~(13)~~] (16) (a) "Electrical trade" means the performance of any electrical work involved
 2429 in the installation, construction, alteration, change, repair, removal, or maintenance of facilities,
 2430 buildings, or appendages or appurtenances.

2431 (b) "Electrical trade" does not include:

2432 (i) transporting or handling electrical materials;

2433 (ii) preparing clearance for raceways for wiring; or

2434 (iii) work commonly done by unskilled labor on any installations under the exclusive
 2435 control of electrical utilities.

2436 (c) For purposes of Subsection [~~(13)~~] (16)(b):

2437 (i) no more than one unlicensed person may be so employed unless more than five
 2438 licensed electricians are employed by the shop; and

2439 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio
 2440 permitted by this Subsection [~~(13)~~] (16)(c).

2441 [~~(14)~~] (17) "Employee" means an individual as defined by the division by rule giving
 2442 consideration to the definition adopted by the Internal Revenue Service and the Department of
 2443 Workforce Services.

2444 [~~(15)~~] (18) "Engage in a construction trade" means to:

2445 (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged
2446 in a construction trade; or

2447 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person
2448 to believe one is or will act as a contractor.

2449 [~~(16)~~] (19) (a) "Financial responsibility" means a demonstration of a current and
2450 expected future condition of financial solvency evidencing a reasonable expectation to the
2451 division and the board that an applicant or licensee can successfully engage in business as a
2452 contractor without jeopardy to the public health, safety, and welfare.

2453 (b) Financial responsibility may be determined by an evaluation of the total history
2454 concerning the licensee or applicant including past, present, and expected condition and record
2455 of financial solvency and business conduct.

2456 [~~(17)~~] (20) "Gas appliance" means any device that uses natural gas to produce light,
2457 heat, power, steam, hot water, refrigeration, or air conditioning.

2458 [~~(18)~~] (21) (a) "General building contractor" means a person licensed under this
2459 chapter as a general building contractor qualified by education, training, experience, and
2460 knowledge to perform or superintend construction of structures for the support, shelter, and
2461 enclosure of persons, animals, chattels, or movable property of any kind or any of the
2462 components of that construction except plumbing, electrical work, mechanical work, and
2463 manufactured housing installation, for which the general building contractor shall employ the
2464 services of a contractor licensed in the particular specialty, except that a general building
2465 contractor engaged in the construction of single-family and multifamily residences up to four
2466 units may perform the mechanical work and hire a licensed plumber or electrician as an
2467 employee.

2468 (b) The division may by rule exclude general building contractors from engaging in the
2469 performance of other construction specialties in which there is represented a substantial risk to
2470 the public health, safety, and welfare, and for which a license is required unless that general
2471 building contractor holds a valid license in that specialty classification.

2472 [~~(19)~~] (22) (a) "General engineering contractor" means a person licensed under this
2473 chapter as a general engineering contractor qualified by education, training, experience, and
2474 knowledge to perform construction of fixed works in any of the following:

- 2475 (i) irrigation[;];
- 2476 (ii) drainage[;];
- 2477 (iii) water[;];
- 2478 (iv) power[;];
- 2479 (v) water supply[;];
- 2480 (vi) flood control[;];
- 2481 (vii) inland waterways[;];
- 2482 (viii) harbors[;];
- 2483 (ix) railroads[;];
- 2484 (x) highways[;];
- 2485 (xi) tunnels[;];
- 2486 (xii) airports and runways[;];
- 2487 (xiii) sewers and bridges[;];
- 2488 (xiv) refineries[;];
- 2489 (xv) pipelines[;];
- 2490 (xvi) chemical and industrial plants requiring specialized engineering knowledge and
- 2491 skill[;];
- 2492 (xvii) piers[~~and~~];
- 2493 (xviii) foundations[;]; or
- 2494 (xix) any of the components of [~~those~~] the works described in this Subsection (23).

2495 (b) A general engineering contractor may not perform construction of structures built

2496 primarily for the support, shelter, and enclosure of persons, animals, and chattels.

2497 [~~(20)~~] (23) "Immediate supervision" means reasonable direction, oversight, inspection,

2498 and evaluation of the work of a person, in or out of the immediate presence of the supervising

2499 person, so as to ensure that the end result complies with applicable standards.

2500 [~~(21)~~] (24) "Individual" means a natural person.

2501 [~~(22)~~] (25) "Journeyman electrician" means a person licensed under this chapter as a

2502 journeyman electrician having the qualifications, training, experience, and knowledge to wire,

2503 install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

2504 [~~(23)~~] (26) "Journeyman plumber" means a person licensed under this chapter as a

2505 journeyman plumber having the qualifications, training, experience, and technical knowledge

2506 to engage in the plumbing trade.

2507 ~~[(24)]~~ (27) "Master electrician" means a person licensed under this chapter as a master
2508 electrician having the qualifications, training, experience, and knowledge to properly plan,
2509 layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment
2510 for light, heat, power, and other purposes.

2511 ~~[(25)]~~ (28) "Person" means:

2512 (a) a natural person[;];

2513 (b) a sole proprietorship[;];

2514 (c) a joint venture[;];

2515 (d) a corporation[;];

2516 (e) a limited liability company[;];

2517 (f) an association[;]; or

2518 (g) an organization of any type.

2519 ~~[(26)]~~ (29) (a) "Plumbing trade" means the performance of any mechanical work
2520 pertaining to the installation, alteration, change, repair, removal, maintenance, or use in
2521 buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and
2522 fittings for:

2523 (i) delivery of the water supply;

2524 (ii) discharge of liquid and water carried waste; or

2525 (iii) the building drainage system within the walls of the building.

2526 (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes,
2527 fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof drains
2528 together with their devices, appurtenances, and connections where installed within the outside
2529 walls of the building.

2530 ~~[(27)]~~ (30) (a) "Ratio of apprentices" means, for the purpose of determining
2531 compliance with the requirements for planned programs of training and electrician apprentice
2532 licensing applications, the shop ratio of apprentice electricians to journeyman or master
2533 electricians shall be one journeyman or master electrician to one apprentice on industrial and
2534 commercial work, and one journeyman or master electrician to three apprentices on residential
2535 work.

2536 (b) On-the-job training shall be under circumstances in which the ratio of apprentices

2537 to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to
2538 three apprentices to one supervisor on residential projects.

2539 ~~[(28)]~~ (31) "Residential and small commercial contractor" means a person licensed
2540 under this chapter as a residential and small commercial contractor qualified by education,
2541 training, experience, and knowledge to perform or superintend the construction of
2542 single-family residences, multifamily residences up to four units, and commercial construction
2543 of not more than three stories above ground and not more than 20,000 square feet, or any of the
2544 components of that construction except plumbing, electrical work, mechanical work, and
2545 manufactured housing installation, for which the residential and small commercial contractor
2546 shall employ the services of a contractor licensed in the particular specialty, except that a
2547 residential and small commercial contractor engaged in the construction of single-family and
2548 multifamily residences up to four units may perform the mechanical work and hire a licensed
2549 plumber or electrician as an employee.

2550 ~~[(29)]~~ (32) "Residential apprentice plumber" means a person licensed under this
2551 chapter as a residential apprentice plumber who is learning the residential plumbing trade while
2552 working on residential buildings under the approved supervision of a residential journeyman
2553 plumber or a journeyman plumber.

2554 ~~[(30)]~~ (33) "Residential building," as it relates to the license classification of residential
2555 apprentice plumber and residential journeyman plumber, means a single or multiple family
2556 dwelling of up to four units.

2557 ~~[(31)]~~ (34) "Residential journeyman electrician" means a person licensed under this
2558 chapter as a residential journeyman electrician having the qualifications, training, experience,
2559 and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat,
2560 power, and other purposes on buildings using primarily nonmetallic sheath cable.

2561 ~~[(32)]~~ (35) "Residential journeyman plumber" means a person licensed under this
2562 chapter as a residential journeyman plumber having the qualifications, training, experience, and
2563 knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

2564 ~~[(33)]~~ (36) "Residential master electrician" means a person licensed under this chapter
2565 as a residential master electrician having the qualifications, training, experience, and
2566 knowledge to properly plan, layout, and supervise the wiring, installation, and repair of
2567 electrical apparatus and equipment for light, heat, power, and other purposes on residential

2568 projects.

2569 [(34)] (37) "Residential project," as it relates to an electrician or electrical contractor,
2570 means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard
2571 rules and regulations governing this work, including the National Electrical Code, and in which
2572 the voltage does not exceed 250 volts line to line and 125 volts to ground.

2573 [(35)] (38) "Specialty contractor" means a person licensed under this chapter under a
2574 specialty contractor classification established by rule, who is qualified by education, training,
2575 experience, and knowledge to perform those construction trades and crafts requiring
2576 specialized skill, the regulation of which are determined by the division to be in the best
2577 interest of the public health, safety, and welfare. A specialty contractor may perform work in
2578 crafts or trades other than those in which [he] the specialty contractor is licensed if they are
2579 incidental to the performance of [his] the speciality contractor's licensed craft or trade.

2580 [(36)] (39) "Unlawful conduct" is as defined in [~~Sections 58-1-501 and 58-55-501~~]
2581 Section 61-2e-501.

2582 [(37)] (40) "Unprofessional conduct" is as defined in [~~Sections 58-1-501 and~~
2583 ~~58-55-502~~] Section 61-2e-502 and as may be further defined by rule.

2584 [(38)] (41) "Wages" means amounts due to an employee for labor or services whether
2585 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for
2586 calculating the amount.

2587 Section 33. Section **61-2e-103**, which is renumbered from Section 58-55-103 is
2588 renumbered and amended to read:

2589 ~~[58-55-103].~~ **61-2e-103. Construction Services Commission created --**
2590 **Functions -- Appointment -- Qualifications and terms of members -- Vacancies --**
2591 **Expenses -- Meetings.**

2592 (1) (a) There is created within the division the Construction Services Commission.

2593 (b) The commission shall:

2594 (i) with the concurrence of the director, make reasonable rules under Title 63, Chapter
2595 46a, Utah Administrative Rulemaking Act, to administer and enforce this chapter which are
2596 consistent with this chapter including:

2597 (A) licensing of various licensees;

2598 (B) examination requirements and administration of the examinations, to include

2599 approving and establishing a passing score for applicant examinations;

2600 (C) standards of supervision for students or persons in training to become qualified to

2601 obtain a license in the trade they represent; and

2602 (D) standards of conduct for various licensees;

2603 (ii) approve or disapprove fees adopted by the division under Section 63-38-3.2;

2604 (iii) except where the boards conduct them, conduct all administrative hearings not

2605 delegated to an administrative law judge relating to the licensing of any applicant;

2606 (iv) except as otherwise provided in Sections 38-11-207 and ~~[58-55-503]~~ 61-2e-503,

2607 with the concurrence of the director, impose sanctions against licensees and certificate holders

2608 with the same authority as the division under Section ~~[58-1-401]~~ 61-2e-401;

2609 (v) advise the director on the administration and enforcement of any matters affecting

2610 the division and the construction industry;

2611 (vi) advise the director on matters affecting the division budget;

2612 (vii) advise and assist trade associations in conducting construction trade seminars and

2613 industry education and promotion; and

2614 (viii) perform other duties as provided by this chapter.

2615 ~~[(2) (a) Initially the commission shall be comprised of the five members of the~~

2616 ~~Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing~~

2617 ~~Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.]~~

2618 ~~[(b) The terms of office of the commission members who are serving on the~~

2619 ~~Contractors Licensing Board shall continue as they serve on the commission.]~~

2620 ~~[(c)]~~ (2) ~~[Beginning July 1, 2004, the]~~ The commission shall be comprised of nine

2621 members appointed by the executive director with the approval of the governor from the

2622 following groups:

2623 ~~[(i)]~~ (a) one member shall be a licensed general engineering contractor;

2624 ~~[(ii)]~~ (b) one member shall be a licensed general building contractor;

2625 ~~[(iii)]~~ (c) two members shall be licensed residential and small commercial contractors;

2626 ~~[(iv)]~~ (d) three members shall be the three chair persons from:

2627 (i) the Plumbers Licensing Board[;];

2628 (ii) the Alarm System Security and Licensing Board[;]; and

2629 (iii) the Electricians Licensing Board; and

2630 [~~(v)~~] (e) two members shall be from the general public~~[- provided, however that the~~
2631 ~~certified public accountant on the Contractors Licensing Board will continue to serve until the~~
2632 ~~current term expires, after which both members under this Subsection (2)(c)(v)(d) shall be~~
2633 ~~appointed from the general public].~~

2634 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
2635 members expire, the executive director with the approval of the governor shall appoint each
2636 new member or reappointed member to a four-year term ending June 30.

2637 (b) Notwithstanding the requirements of Subsection (3)(a), the executive director with
2638 the approval of the governor shall, at the time of appointment or reappointment, adjust the
2639 length of terms to stagger the terms of commission members so that approximately 1/2 of the
2640 commission members are appointed every two years.

2641 (c) A commission member may not serve more than two consecutive terms.

2642 (4) The commission shall elect annually one of its members as chair, for a term of one
2643 year.

2644 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
2645 appointed for the unexpired term.

2646 (6) (a) Members may not receive compensation or benefits for their services, but may
2647 receive per diem and expenses incurred in the performance of the members' official duties at
2648 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2649 (b) Members may decline to receive per diem and expenses for their service.

2650 (7) (a) The commission shall meet at least monthly unless the director determines
2651 otherwise.

2652 (b) The director may call additional meetings:

2653 (i) at the director's discretion~~[-];~~

2654 (ii) upon the request of the chair~~[-];~~ or

2655 (iii) upon the written request of four or more commission members.

2656 (8) (a) Five members constitute a quorum for the transaction of business.

2657 (b) If a quorum is present when a vote is taken, the affirmative vote of commission
2658 members present is the act of the commission.

2659 (9) The commission shall comply with the procedures and requirements of Title 13,
2660 Chapter 1, Department of Commerce, and Title 63, Chapter 46b, Administrative Procedures

2661 Act, in all of its adjudicative proceedings.

2662 Section 34. Section **61-2e-104** is enacted to read:

2663 **61-2e-104. Adjudicative proceedings.**

2664 (1) The division, the commission, and the boards created under this chapter shall
2665 comply with the procedures and requirements of Title 13, Chapter 1, Department of
2666 Commerce, and Title 63, Chapter 46b, Administrative Procedures Act, in all of their
2667 adjudicative proceedings as defined by Subsection 63-46b-2(1).

2668 (2) Before proceeding under Section 63-46b-20, the division shall review the proposed
2669 action with a committee of no less than three licensees appointed by the chair of the licensing
2670 board created under this chapter for the profession of the person against whom the action is
2671 proposed.

2672 (3) Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act, a warning
2673 or final disposition letter that does not constitute disciplinary action against the addressee,
2674 issued in response to a complaint of unprofessional or unlawful conduct under this chapter,
2675 does not constitute an adjudicative proceeding.

2676 Section 35. Section **61-2e-201**, which is renumbered from Section 58-55-201 is
2677 renumbered and amended to read:

2678 **Part 2. Boards**

2679 **[58-55-201].** **61-2e-201. Boards created -- Duties.**

2680 (1) There is created a Plumbers Licensing Board, an Alarm System Security and
2681 Licensing Board, and an Electricians Licensing Board. Members of the boards shall be
2682 selected to provide representation as ~~[follows]~~ provided in this Subsection (1):

2683 (a) The Plumbers Licensing Board consists of five members as follows:

2684 (i) four members shall be licensed journeyman plumbers, of whom two shall be
2685 licensed plumbing contractors; and

2686 (ii) one member shall be from the public at large with no history of involvement in the
2687 construction trades.

2688 (b) (i) The Alarm System Security and Licensing Board consists of five members as
2689 follows:

2690 (A) three individuals who are officers or owners of a licensed alarm business;

2691 (B) one individual from among nominees of the Utah Peace Officers Association; and

2692 (C) one individual representing the general public.

2693 (ii) The Alarm System Security and Licensing Board shall designate one of its
2694 members on a permanent or rotating basis to:

2695 (A) assist the division in reviewing complaints concerning the unlawful or
2696 unprofessional conduct of a licensee; and

2697 (B) advise the division in its investigation of ~~[these]~~ the complaints described in
2698 Subsection (1)(b)(ii)(A).

2699 (iii) A board member who has~~[, under Subsection (3),]~~ reviewed a complaint or
2700 advised in its investigation is disqualified from participating with the board when the board
2701 serves as a presiding officer in an adjudicative proceeding concerning the complaint.

2702 (c) The Electricians Licensing Board consists of five members as follows:

2703 (i) two members shall be licensed from among the license classifications of master or
2704 journeyman electrician, of whom:

2705 (A) one shall represent a union organization; and

2706 (B) one shall be selected having no union affiliation;

2707 (ii) two shall be licensed electrical contractors of whom:

2708 (A) one shall represent a union organization; and

2709 (B) one shall be selected having no union affiliation; and

2710 (iii) one member shall be from the public at large with no history of involvement in the
2711 construction trades or union affiliation.

2712 (2) (a) The executive director shall appoint the members of the boards created by this
2713 section.

2714 (b) In appointing these members the executive director shall give consideration to
2715 recommendations by members of the respective occupations and professions and by their
2716 organizations.

2717 (c) The names of all persons appointed to boards shall be submitted to the governor for
2718 confirmation or rejection. If an appointee is rejected by the governor, the executive director
2719 shall appoint another person in the same manner as set forth in Subsection (2)(a).

2720 (3) (a) Except as required by Subsection (3)(b), as terms of current board members
2721 expire, the executive director shall appoint each new member or reappointed member to a
2722 four-year term.

2723 (b) Notwithstanding the requirements of Subsection (3)(a), the executive director shall,
2724 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
2725 of board members are staggered so that approximately half of the board is appointed every two
2726 years.

2727 (c) A board member may not serve more than two consecutive terms, and a board
2728 member who ceases to serve on a board may not serve again on that board until after the
2729 expiration of a two-year period beginning from that cessation of service.

2730 (d) (i) When a vacancy occurs in the membership for any reason, the replacement shall
2731 be appointed for the unexpired term.

2732 (ii) After filling that term, the replacement member may be appointed for only one
2733 additional full term.

2734 (e) If a board member fails or refuses to fulfill the responsibilities and duties of a board
2735 member, including the attendance at board meetings, the executive director with the approval
2736 of the board may remove the board member and replace the member in accordance with this
2737 section.

2738 ~~[(2)]~~ (4) The duties, functions, and responsibilities of each board include the following:

2739 (a) recommending to the commission appropriate rules;

2740 (b) recommending to the commission policy and budgetary matters;

2741 (c) approving and establishing a passing score for applicant examinations;

2742 (d) overseeing the screening of applicants for licensing, renewal, reinstatement, and
2743 relicensure;

2744 (e) assisting the commission in establishing standards of supervision for students or
2745 persons in training to become qualified to obtain a license in the occupation or profession it
2746 represents; and

2747 (f) acting as presiding officer in conducting hearings associated with the adjudicative
2748 proceedings and in issuing recommended orders when so authorized by the commission.

2749 (5) A majority of the board members constitutes a quorum. A quorum is sufficient
2750 authority for the board to act.

2751 (6) (a) A member who is not a government employee shall receive no compensation or
2752 benefits for the member's services, but may receive per diem and expenses incurred in the
2753 performance of the member's official duties at the rates established by the Division of Finance

2754 under Sections 63A-3-106 and 63A-3-107.

2755 (b) A member may decline to receive per diem and expenses for the member's service.

2756 (7) Each board shall annually designate one of its members to serve as chair for a
2757 one-year period.

2758 (8) A board member may not be a member of the faculty of or have any financial
2759 interest in any vocational or professional college or school which provides continuing
2760 education to any licensee if that continuing education is required by statute or rule.

2761 Section 36. Section **61-2e-301**, which is renumbered from Section 58-55-301 is
2762 renumbered and amended to read:

2763 **Part 3. Licensing**

2764 ~~[58-55-301].~~ **61-2e-301. License required -- License classifications --**
2765 **Denial.**

2766 (1) (a) Any person engaged in the construction trades licensed under this chapter, as a
2767 contractor regulated under this chapter, as an alarm business or company, or as an alarm
2768 company agent, shall become licensed under this chapter before engaging in that trade or
2769 contracting activity in this state unless specifically exempted from licensure under Section
2770 ~~[58-1-307 or 58-55-305]~~ 61-2e-305.

2771 (b) The license issued under this chapter and the business license issued by the local
2772 jurisdiction in which the licensee has its principal place of business shall be the only licenses
2773 required for the licensee to engage in a trade licensed by this chapter, within the state.

2774 (c) Neither the state nor any of its political subdivisions may require of a licensee any
2775 additional business licenses, registrations, certifications, contributions, donations, or anything
2776 else established for the purpose of qualifying a licensee under this chapter to do business in that
2777 local jurisdiction, except for:

2778 (i) contract prequalification procedures required by state agencies[?]; or

2779 (ii) the payment of any fee for the license, registration, or certification established as a
2780 condition to do business in that local jurisdiction.

2781 (2) The division shall issue licenses under this chapter to qualified persons in the
2782 following classifications:

2783 (a) general engineering contractor;

2784 (b) general building contractor;

- 2785 (c) residential and small commercial contractor;
2786 (d) specialty contractor;
2787 (e) journeyman plumber;
2788 (f) apprentice plumber;
2789 (g) residential journeyman plumber;
2790 (h) residential apprentice plumber;
2791 (i) master electrician;
2792 (j) residential master electrician;
2793 (k) journeyman electrician;
2794 (l) residential journeyman electrician;
2795 (m) apprentice electrician;
2796 (n) construction trades instructor:
2797 (i) general engineering classification;
2798 (ii) general building classification;
2799 (iii) electrical classification;
2800 (iv) plumbing classification; and
2801 (v) mechanical classification;
2802 (o) alarm company; and
2803 (p) alarm company agent.
- 2804 (3) An applicant may apply for a license in one or more classification or specialty
2805 contractor subclassification. A license shall be granted in each classification or
2806 subclassification for which the applicant qualifies. A separate application and fee must be
2807 submitted for each license classification or subclassification.
- 2808 (4) (a) Each license applicant shall apply to the division in writing upon forms
2809 available from the division. Each completed application shall:
- 2810 (i) contain documentation of the particular qualifications required of the applicant;
2811 (ii) include the applicant's Social Security number;
2812 (iii) be verified by the applicant; and
2813 (iv) be accompanied by the appropriate fees.
- 2814 (b) An applicant's Social Security number is a private record under Subsection
2815 63-2-302(1)(h).

2816 (5) (a) A license shall be issued to an applicant who submits a complete application if
2817 the division determines that the applicant meets the qualifications of licensure.

2818 (b) A written notice of additional proceedings shall be provided to an applicant who
2819 submits a complete application, but who has been, is, or will be placed under investigation by
2820 the division for conduct directly bearing upon the applicant's qualifications for licensure, if the
2821 outcome of additional proceedings is required to determine the division's response to the
2822 application.

2823 (c) A written notice of denial of licensure shall be provided to an applicant who
2824 submits a complete application if the division determines that the applicant does not meet the
2825 qualifications of licensure.

2826 (d) A written notice of incomplete application and conditional denial of licensure shall
2827 be provided to an applicant who submits an incomplete application. This notice shall advise
2828 the applicant that the application:

2829 (i) is incomplete; and

2830 (ii) is denied, unless the applicant:

2831 (A) corrects the deficiencies within the time period specified in the notice; and

2832 (B) otherwise meets all qualifications for licensure.

2833 (6) Before any person is issued a license under this title, all requirements for that
2834 license as established under this chapter and by rule shall be met.

2835 (7) If all requirements are met for the specific license, the division shall issue the
2836 license.

2837 Section 37. Section **61-2e-302**, which is renumbered from Section 58-55-302 is
2838 renumbered and amended to read:

2839 ~~[58-55-302]~~. **61-2e-302. Qualifications for licensure.**

2840 (1) Each applicant for a license under this chapter shall:

2841 (a) submit an application prescribed by the division;

2842 (b) pay a fee as determined by the department under Section 63-38-3.2;

2843 (c) (i) meet the examination requirements established by rule by the commission with
2844 the concurrence of the director, except for the classifications of apprentice plumber, residential
2845 apprentice plumber, and apprentice electrician for whom no examination is required; or

2846 (ii) if required in Section ~~[58-55-304]~~ 61-2e-304, the individual qualifier must pass the

- 2847 required examination if the applicant is a business entity;
- 2848 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;
- 2849 (e) if an applicant for a contractor's license:
- 2850 (i) produce satisfactory evidence of financial responsibility, except for a construction
- 2851 trades instructor for whom evidence of financial responsibility is not required;
- 2852 (ii) produce satisfactory evidence of knowledge and experience in the construction
- 2853 industry and knowledge of the principles of the conduct of business as a contractor, reasonably
- 2854 necessary for the protection of the public health, safety, and welfare; and
- 2855 (iii) (A) be a licensed master electrician if an applicant for an electrical contractor's
- 2856 license; or
- 2857 (B) a licensed master residential electrician if an applicant for a residential electrical
- 2858 contractor's license; or
- 2859 (iv) be a journeyman plumber or residential journeyman plumber if an applicant for a
- 2860 plumbing contractor's license; and
- 2861 (f) if an applicant for a construction trades instructor license, satisfy any additional
- 2862 requirements established by rule.
- 2863 (2) After approval of an applicant for a contractor's license by the applicable board and
- 2864 the division, the applicant shall file the following with the division before the division issues
- 2865 the license:
- 2866 (a) proof of workers' compensation insurance which covers employees of the applicant
- 2867 in accordance with applicable Utah law;
- 2868 (b) proof of public liability insurance in coverage amounts and form established by rule
- 2869 except for a construction trades instructor for whom public liability insurance is not required;
- 2870 and
- 2871 (c) proof of registration as required by applicable law with the:
- 2872 (i) Utah Department of Commerce;
- 2873 (ii) Division of Corporations and Commercial Code;
- 2874 (iii) Division of Workforce Information and Payment Services in the Department of
- 2875 Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;
- 2876 (iv) State Tax Commission; and
- 2877 (v) Internal Revenue Service.

2878 (3) In addition to the general requirements for each applicant in Subsection (1),
2879 applicants shall comply with the following requirements to be licensed in the [following]
2880 classifications of this Subsection (3):

2881 (a) A journeyman plumber applicant shall produce satisfactory evidence of:

2882 (i) successful completion of the equivalent of at least four years of full-time training
2883 and instruction as a licensed apprentice plumber under supervision of a licensed journeyman
2884 plumber and in accordance with a planned program of training approved by the division;

2885 (ii) at least eight years of full-time experience approved by the division in collaboration
2886 with the Plumbers Licensing Board; or

2887 (iii) satisfactory evidence of meeting the qualifications determined by the board to be
2888 equivalent to Subsection (3)(a)(i) or (a)(ii).

2889 (b) A residential journeyman plumber shall produce satisfactory evidence of:

2890 (i) completion of the equivalent of at least three years of full-time training and
2891 instruction as a licensed apprentice plumber under the supervision of a licensed residential
2892 journeyman plumber or licensed journeyman plumber in accordance with a planned program of
2893 training approved by the division;

2894 (ii) completion of at least six years of full-time experience in a maintenance or repair
2895 trade involving substantial plumbing work; or

2896 (iii) meeting the qualifications determined by the board to be equivalent to Subsection
2897 (3)(b)(i) or (b)(ii).

2898 (c) (i) A master electrician applicant shall produce satisfactory evidence that the
2899 applicant:

2900 (A) (I) is a graduate electrical engineer of an accredited college or university approved
2901 by the division; and

2902 (II) has one year of practical electrical experience as a licensed apprentice electrician;

2903 (B) (I) is a graduate of an electrical trade school, having received an associate of
2904 applied sciences degree following successful completion of a course of study approved by the
2905 division[-]; and

2906 (II) has two years of practical experience as a licensed journeyman electrician;

2907 (C) has four years of practical experience as a journeyman electrician; or

2908 (D) meets the qualifications determined by the board to be equivalent to Subsection

2909 (3)(c)(i)(A), (B), or (C).

2910 (ii) (A) An individual holding a valid Utah license as a master electrician, based on at
2911 least eight years of practical experience as a licensed apprentice under the supervision of a
2912 licensed journeyman or master electrician, in effect immediately prior to May 3, 2004, is on
2913 and after May 3, 2004, considered to hold a current license under this chapter and satisfies the
2914 requirements of this Subsection (3)(c) for the purpose of renewal or reinstatement of that
2915 license under Section [~~58-55-303~~] 61-2e-303.

2916 (B) An individual who has less than four years of practical experience as a licensed
2917 apprentice under the supervision of a licensed journeyman or master electrician prior to May 3,
2918 2004, shall complete the education requirements of Subsection (3)(c)(i)(A) or (B) to qualify for
2919 licensing as a master electrician.

2920 (C) An individual who has more than four but less than six years of practical
2921 experience as a licensed apprentice under the supervision of a licensed journeyman or master
2922 electrician prior to May 3, 2004, may satisfy the education requirements of Subsection
2923 (3)(c)(i)(A) or (B) by successfully passing a competency placement test approved by the board
2924 and administered at a Utah state institution of higher education.

2925 (D) An individual who has more than six but less than eight years of practical
2926 experience as a licensed apprentice under the supervision of a licensed journeyman or master
2927 electrician prior to May 3, 2004, satisfies the education requirements of this Subsection (3)(c)
2928 by completing the eight-year term of practical experience within a reasonable time frame
2929 subsequent to May 3, 2004, as established by board rule in accordance with Title 63, Chapter
2930 46a, Utah Administrative Rulemaking Act.

2931 (d) A master residential electrician applicant shall produce satisfactory evidence that
2932 the applicant:

2933 (i) has at least two years of practical experience as a residential journeyman electrician;
2934 or

2935 (ii) meets the qualifications determined by the board to be equivalent to this practical
2936 experience.

2937 (e) (i) A journeyman electrician applicant shall produce satisfactory evidence that the
2938 applicant:

2939 (A) has successfully completed at least four years of full-time training and instruction

2940 as a licensed apprentice electrician under the supervision of a master electrician or journeyman
2941 electrician and in accordance with a planned training program approved by the division;

2942 (B) has at least eight years of full-time experience approved by the division in
2943 collaboration with the Electricians Licensing Board; or

2944 (C) meets the qualifications determined by the board to be equivalent to Subsection
2945 (3)(e)(i)(A) or (B).

2946 (ii) An individual holding a valid Utah license as a journeyman electrician, based on at
2947 least six years of full-time experience approved by the division in collaboration with the
2948 Electricians Licensing Board in effect immediately prior to May 3, 2004, is on and after May 3,
2949 2004, considered to hold a current license under this chapter and satisfies the requirements of
2950 Subsection (3)(e)(i)(B) for the purpose of renewal or reinstatement of that license under
2951 Section [~~58-55-303~~] 61-2e-303.

2952 (iii) An individual who has more than six but less than eight years of full-time
2953 experience approved by the division in collaboration with the Electricians Licensing Board
2954 prior to May 3, 2004, satisfies the requirements of Subsection (3)(e)(i) by completing the
2955 eight-year term of practical experience within a reasonable time frame subsequent to May 3,
2956 2004, as established by board rule made in accordance with Title 63, Chapter 46a, Utah
2957 Administrative Rulemaking Act.

2958 (f) A residential journeyman electrician applicant shall produce satisfactory evidence
2959 that the applicant:

2960 (i) has successfully completed two years of training in an electrical training program
2961 approved by the division;

2962 (ii) has four years of practical experience in wiring, installing, and repairing electrical
2963 apparatus and equipment for light, heat, and power under the supervision of a licensed master,
2964 journeyman, residential master, or residential journeyman electrician; or

2965 (iii) meets the qualifications determined by the division and applicable board to be
2966 equivalent to Subsection (3)(f)(i) or (ii).

2967 (g) The conduct of licensed apprentice electricians and their licensed supervisors shall
2968 be in accordance with the [~~following~~] requirements of this Subsection (3)(g):

2969 (i) A licensed apprentice electrician shall be under the immediate supervision of a
2970 licensed master, journeyman, residential master, or residential journeyman electrician. An

2971 apprentice in the fourth year of training may work without supervision for a period not to
2972 exceed eight hours in any 24-hour period.

2973 (ii) A licensed master, journeyman, residential master, or residential journeyman
2974 electrician may have under immediate supervision on a residential project up to three licensed
2975 apprentice electricians.

2976 (iii) A licensed master or journeyman electrician may have under immediate
2977 supervision on nonresidential projects only one licensed apprentice electrician.

2978 (h) An alarm company applicant shall:

2979 (i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of
2980 the applicant who:

2981 (A) demonstrates 6,000 hours of experience in the alarm company business;

2982 (B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm
2983 company business or in a construction business; and

2984 (C) passes an examination component established by rule by the commission with the
2985 concurrence of the director;

2986 (ii) if a corporation, provide:

2987 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
2988 of all corporate officers, directors, and those responsible management personnel employed
2989 within the state or having direct responsibility for managing operations of the applicant within
2990 the state; and

2991 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
2992 of all shareholders owning 5% or more of the outstanding shares of the corporation, except this
2993 [~~shall not be~~ is not required if the stock is publicly listed and traded;

2994 (iii) if a limited liability company, provide:

2995 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
2996 of all company officers, and those responsible management personnel employed within the
2997 state or having direct responsibility for managing operations of the applicant within the state;
2998 and

2999 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
3000 of all individuals owning 5% or more of the equity of the company;

3001 (iv) if a partnership, the names, addresses, dates of birth, Social Security numbers, and

3002 fingerprint cards of all general partners, and those responsible management personnel
3003 employed within the state or having direct responsibility for managing operations of the
3004 applicant within the state;

3005 (v) if a proprietorship, the names, addresses, dates of birth, Social Security numbers,
3006 and fingerprint cards of the proprietor, and those responsible management personnel employed
3007 within the state or having direct responsibility for managing operations of the applicant within
3008 the state;

3009 (vi) be of good moral character in that officers, directors, shareholders described in
3010 Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have not
3011 been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that
3012 when considered with the duties and responsibilities of an alarm company is considered by the
3013 board to indicate that the best interests of the public are served by granting the applicant a
3014 license;

3015 (vii) document that none of the applicant's officers, directors, shareholders described in
3016 Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have
3017 been declared by any court of competent jurisdiction incompetent by reason of mental defect or
3018 disease and not been restored;

3019 (viii) document that none of the applicant's officers, directors, shareholders described
3020 in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel are
3021 currently suffering from habitual drunkenness or from drug addiction or dependence;

3022 (ix) file and maintain with the division evidence of:

3023 (A) comprehensive general liability insurance in form and in amounts to be established
3024 by rule by the commission with the concurrence of the director;

3025 (B) workers' compensation insurance that covers employees of the applicant in
3026 accordance with applicable Utah law; and

3027 (C) registration as is required by applicable law with the:

3028 (I) Division of Corporations and Commercial Code;

3029 (II) Division of Workforce Information and Payment Services in the Department of
3030 Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

3031 (III) State Tax Commission; and

3032 (IV) Internal Revenue Service; and

- 3033 (x) meet with the division and board.
- 3034 (i) Each applicant for licensure as an alarm company agent shall:
- 3035 (i) submit an application in a form prescribed by the division accompanied by
- 3036 fingerprint cards;
- 3037 (ii) pay a fee determined by the department under Section 63-38-3.2;
- 3038 (iii) be of good moral character in that the applicant has not been convicted of a felony,
- 3039 a misdemeanor involving moral turpitude, or any other crime that when considered with the
- 3040 duties and responsibilities of an alarm company agent is considered by the board to indicate
- 3041 that the best interests of the public are served by granting the applicant a license;
- 3042 (iv) not have been declared by any court of competent jurisdiction incompetent by
- 3043 reason of mental defect or disease and not been restored;
- 3044 (v) not be currently suffering from habitual drunkenness or from drug addiction or
- 3045 dependence; and
- 3046 (vi) meet with the division and board if requested by the division or the board.
- 3047 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 3048 division may make rules establishing when Federal Bureau of Investigation records shall be
- 3049 checked for applicants as an alarm company or alarm company agent.
- 3050 (5) To determine if an applicant meets the qualifications of Subsections (3)(h)(vi) and
- 3051 (3)(i)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
- 3052 Department of Public Safety with the division's request to:
- 3053 (a) conduct a search of records of the Department of Public Safety for criminal history
- 3054 information relating to:
- 3055 (i) each applicant for licensure as an alarm company or alarm company agent; and
- 3056 (ii) each applicant's officers, directors, shareholders described in Subsection
- 3057 (3)(h)(ii)(B), partners, proprietors, and responsible management personnel; and
- 3058 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
- 3059 requiring a check of records of the [F.B.I.] Federal Bureau of Investigation for criminal history
- 3060 information under this section.
- 3061 (6) The Department of Public Safety shall send to the division:
- 3062 (a) a written record of criminal history, or certification of no criminal history record, as
- 3063 contained in the records of the Department of Public Safety in a timely manner after receipt of

3064 a fingerprint card from the division and a request for review of Department of Public Safety
3065 records; and

3066 (b) the results of the [F.B.I.] Federal Bureau of Investigation review concerning an
3067 applicant in a timely manner after receipt of information from the [F.B.I.] Federal Bureau of
3068 Investigation.

3069 (7) (a) The division shall charge each applicant for licensure as an alarm company or
3070 alarm company agent a fee, in accordance with Section 63-38-3.2, equal to the cost of
3071 performing the records reviews under this section.

3072 (b) The division shall pay the Department of Public Safety the costs of all records
3073 reviews, and the Department of Public Safety shall pay the [F.B.I.] Federal Bureau of
3074 Investigation the costs of records reviews under this section.

3075 (8) Information obtained by the division from the reviews of criminal history records of
3076 the Department of Public Safety and the [F.B.I.] Federal Bureau of Investigation shall be used
3077 or disseminated by the division only for the purpose of determining if an applicant for licensure
3078 as an alarm company or alarm company agent is qualified for licensure.

3079 (9) (a) An application for licensure under this chapter shall be denied if:

3080 (i) the applicant has had a previous license, which was issued under this chapter,
3081 suspended or revoked within one year prior to the date of the applicant's application;

3082 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

3083 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
3084 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
3085 status, performing similar functions, or directly or indirectly controlling the applicant has
3086 served in any similar capacity with any person or entity which has had a previous license,
3087 which was issued under this chapter, suspended or revoked within one year prior to the date of
3088 the applicant's application; or

3089 (iii) (A) the applicant is an individual or sole proprietorship; and

3090 (B) any owner or agent acting as a qualifier has served in any capacity listed in
3091 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
3092 this chapter, suspended or revoked within one year prior to the date of the applicant's
3093 application.

3094 (b) An application for licensure under this chapter shall be reviewed by the appropriate

3095 licensing board prior to approval if:

3096 (i) the applicant has had a previous license, which was issued under this chapter,
3097 suspended or revoked more than one year prior to the date of the applicant's application;

3098 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

3099 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
3100 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
3101 status, performing similar functions, or directly or indirectly controlling the applicant has
3102 served in any similar capacity with any person or entity which has had a previous license,
3103 which was issued under this chapter, suspended or revoked more than one year prior to the date
3104 of the applicant's application; or

3105 (iii) (A) the applicant is an individual or sole proprietorship; and

3106 (B) any owner or agent acting as a qualifier has served in any capacity listed in
3107 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
3108 this chapter, suspended or revoked more than one year prior to the date of the applicant's
3109 application.

3110 Section 38. Section **61-2e-303**, which is renumbered from Section 58-55-303 is
3111 renumbered and amended to read:

3112 ~~[58-55-303].~~ **61-2e-303. Term of license -- Expiration -- Renewal --**

3113 **Reinstatement.**

3114 (1) (a) Each license issued under this chapter shall be issued in accordance with a
3115 two-year renewal cycle established by rule.

3116 (b) The division may by rule extend or shorten a renewal period by as much as one year
3117 to stagger the renewal cycle it administers.

3118 (2) At the time of renewal, the licensee shall show satisfactory evidence of continuing
3119 financial responsibility as required under Section ~~[58-55-306]~~ 61-2e-306.

3120 (3) (a) The expiration date of a license shall be shown on the license.

3121 ~~[(3)]~~ (b) Each license automatically expires on the expiration date shown on the license
3122 unless the licensee renews the license in accordance with ~~[Section 58-1-308]~~ this section.

3123 (c) A license automatically expires before the expiration date shown on the license
3124 upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is
3125 a partnership, corporation, or other business entity.

3126 (d) If the existence of a dissolved partnership, corporation, or other business entity is
3127 reinstated prior to the expiration date shown upon the entity's expired license issued by the
3128 division, the division shall, upon written application, reinstate the applicant's license, unless the
3129 division finds that the applicant no longer meets the qualifications for licensure.

3130 (e) Expiration of licensure is not an adjudicative proceeding under Title 63, Chapter
3131 46b, Administrative Procedures Act.

3132 (4) The requirements of Subsection [~~58-55-302~~] 61-2e-302(9) shall also apply to
3133 applicants seeking to renew or reinstate a license.

3134 (5) In addition to any other requirements imposed by law, if a license has been
3135 suspended or revoked for any reason, the applicant must:

3136 (a) pay in full all fines imposed by the division[;];

3137 (b) resolve any outstanding citations or disciplinary actions with the division[;];

3138 (c) satisfy any Section [~~58-55-503~~] 61-2e-503 judgment and sentence or nontrial
3139 resolution[;];

3140 (d) complete a new financial responsibility review as required under Section
3141 [~~58-55-306~~] 61-2e-306, using only titled assets[;]; and

3142 (e) pay in full any reimbursement amount as provided in Title 38, Chapter 11,
3143 Residence Lien Restriction and Lien Recovery Fund Act.

3144 (6) (a) The division shall notify each licensee in accordance with procedures
3145 established by rule that the licensee's license is due for renewal and that unless an application
3146 for renewal is received by the division by the expiration date shown on the license, together
3147 with the appropriate renewal fee and documentation showing completion of or compliance with
3148 renewal qualifications, the license will not be renewed.

3149 (b) Examples of renewal qualifications that by statute or rule the division may require
3150 the licensee to document completion of or compliance with include:

3151 (i) continuing education;

3152 (ii) continuing competency;

3153 (iii) quality assurance;

3154 (iv) utilization plan and protocol;

3155 (v) financial responsibility;

3156 (vi) certification renewal; and

3157 (vii) calibration of equipment.

3158 (7) (a) (i) An application for renewal that complies with Subsection (6) is complete.

3159 (ii) A renewed license shall be issued to an applicant who submits a complete

3160 application, unless it is apparent to the division that the applicant no longer meets the

3161 qualifications for continued licensure.

3162 (b) (i) The division may evaluate or verify documentation showing completion of or

3163 compliance with renewal requirements on an entire population or a random sample basis, and

3164 may be assisted by advisory peer committees.

3165 (ii) If necessary, the division may complete its evaluation or verification subsequent to

3166 renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no

3167 longer meets the qualifications for continued licensure.

3168 (c) The application procedures specified in Subsection 61-2e-301(5) apply to renewal

3169 applications to the extent they are not in conflict with this section.

3170 (8) (a) Any license that is not renewed may be reinstated at any time within two years

3171 after nonrenewal upon:

3172 (i) submission of an application for reinstatement;

3173 (ii) payment of the renewal fee together with a reinstatement fee determined by the

3174 division under Section 63-38-3.2; and

3175 (iii) submission of documentation showing completion of or compliance with renewal

3176 qualifications.

3177 (b) The application procedures specified in Subsection 61-2e-301(5) apply to the

3178 reinstatement applications to the extent they are not in conflict with this section.

3179 (c) Except as otherwise provided by rule, a license that is reinstated no later than 120

3180 days after it expires shall be retroactively reinstated to the date it expired.

3181 (9) (a) If not reinstated within two years, the holder may obtain a license only if the

3182 holder meets requirements provided by the division by rule or by statute for a new license.

3183 (b) Each licensee under this chapter who has been active in the licensed occupation or

3184 profession while in the full-time employ of the United States government or under license to

3185 practice that occupation or profession in any other state or territory of the United States may

3186 reinstate the licensee's license without taking an examination by:

3187 (i) submitting an application for reinstatement;

- 3188 (ii) paying the current annual renewal fee and the reinstatement fee; and
- 3189 (iii) submitting documentation showing completion of or compliance with any renewal
- 3190 qualifications at any time within six months after reestablishing domicile within Utah or
- 3191 terminating full-time government service.

3192 Section 39. Section **61-2e-304**, which is renumbered from Section 58-55-304 is

3193 renumbered and amended to read:

3194 ~~[58-55-304].~~ **61-2e-304. Licensee names -- License number use -- License**

3195 **qualifier.**

3196 (1) ~~[No]~~ A license may not be issued by the division in a name that is identical to or so

3197 resembles the name of another licensee that the division determines that it may result in

3198 confusion or mistake.

3199 (2) The contractor's license number shall be made a part of all permit applications,

3200 contracts, agreements, or bids when a license is required.

3201 (3) The division may issue a license in the name of an individual or the name of a

3202 business entity for which the individual acts as a qualifier, in accordance with ~~[the following:]~~

3203 this Subsection (3).

3204 (a) An individual shall:

3205 (i) submit an application in the individual's name;

3206 (ii) demonstrate the individual's own financial responsibility; and

3207 (iii) pass the required examination and meet all other requirements of this chapter.

3208 (b) A business entity shall:

3209 (i) submit the application in the name of and on behalf of the business entity;

3210 (ii) list the individual as the qualifier;

3211 (iii) demonstrate financial responsibility of the business entity if applying for a

3212 contractor's license;

3213 (iv) provide evidence that the individual qualifier has passed the required examination;

3214 and

3215 (v) meet all other requirements of this chapter.

3216 (4) A person acting as a qualifier for a business entity licensee must demonstrate to the

3217 division that the individual is an owner, officer, or manager within that business entity who

3218 exercises material authority in the conduct of that business entity's contracting business by:

3219 (a) making substantive technical and administrative decisions relating to the work
3220 performed for which a license is required under this chapter;

3221 (b) hiring, promoting, transferring, laying off, disciplining, directing, or discharging
3222 employees of the licensee either by himself or through others; and

3223 (c) not being involved in any other employment or activity which conflicts with the
3224 individual's duties and responsibilities to ensure the licensee's performance of work regulated
3225 under this chapter does not jeopardize the public health, safety, and welfare.

3226 (5) (a) Except as provided in Subsections (5)(b) and (c), it is the duty and responsibility
3227 of the licensee and the qualifier to comply with the provisions of this section. Failure to
3228 comply with the requirements of this section may be considered unprofessional conduct by the
3229 licensee, the qualifier, or both.

3230 (b) (i) If a licensee business entity has maintained its license and has not violated the
3231 requirements of this chapter [~~or Sections 58-55-101 through 58-55-604~~] for a period of ten
3232 consecutive years, the business entity may maintain its license under this chapter by recording
3233 an active employee name and registration/license number from the applicable trade on the
3234 renewal application in order to comply with the individual qualifier requirements of this
3235 section. [~~However, this~~]

3236 (ii) This Subsection (5)(b) [~~shall~~] does not apply if more than 50% of the ownership of
3237 the business entity has been transferred at any time during the ten-year period.

3238 (c) (i) If a plumbing or electrical business entity has maintained its license and has not
3239 violated the requirements of this chapter [~~or Sections 58-55-101 through 58-55-604~~] for a
3240 period of five consecutive years, the business entity may maintain its license under this chapter
3241 by recording an active employee name and registration/license number from the applicable
3242 trade on the renewal application in order to comply with the individual qualifier requirements
3243 of this section. [~~However, this~~]

3244 (ii) This Subsection (5)(c) [~~shall~~] does not apply if more than 50% of the ownership of
3245 the business entity has been transferred at any time during the five-year period.

3246 (6) If an individual qualifying on behalf of a business entity issued a license under this
3247 chapter ceases association with that entity as required in Subsection (4), the licensee shall
3248 notify the division in writing within ten days after cessation of association or employment. If
3249 notice is given, the license shall remain in force for 60 days after the date of cessation of

3250 association or employment. The licensee shall replace the original qualifier with another
3251 individual qualifier within the 60-day period or the license shall be automatically suspended.

3252 (7) Failure to notify the division of cessation of association or employment of a
3253 qualifier as required in Subsection (6) may result in immediate suspension of the license upon a
3254 finding of good cause.

3255 Section 40. Section **61-2e-305**, which is renumbered from Section 58-55-305 is
3256 renumbered and amended to read:

3257 ~~[58-55-305].~~ **61-2e-305. Exemptions from licensure.**

3258 (1) ~~[In addition to the exemptions from licensure in Section 58-1-307, the]~~ Except as
3259 otherwise provided by rule for Subsections (1)(q) through (w), the following persons may
3260 engage in acts or practices included within the practice of construction trades, subject to the
3261 stated circumstances and limitations, without being licensed under this chapter:

3262 (a) an authorized representative of the United States government or an authorized
3263 employee of the state or any of its political subdivisions when working on construction work of
3264 the state or the subdivision, and when acting within the terms of the person's trust, office, or
3265 employment;

3266 (b) a person engaged in construction or operation incidental to the construction and
3267 repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation
3268 districts, and drainage districts or construction and repair relating to farming, dairying,
3269 agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel
3270 excavations, well drilling, as defined in Subsection 73-3-24(3), hauling to and from
3271 construction sites, and lumbering;

3272 (c) public utilities operating under the rules of the Public Service Commission on
3273 construction work incidental to their own business;

3274 (d) sole owners of property engaged in building:

3275 (i) no more than one residential structure per year and no more than three residential
3276 structures per five years on their property for their own noncommercial, nonpublic use; except,
3277 a person other than the property owner or individuals described in Subsection (1)(e), who
3278 engages in building the structure must be licensed under this chapter if the person is otherwise
3279 required to be licensed under this chapter; or

3280 (ii) structures on their property for their own noncommercial, nonpublic use which are

3281 incidental to a residential structure on the property, including sheds, carports, or detached
3282 garages;

3283 (e) (i) a person engaged in construction or renovation of a residential building for
3284 noncommercial, nonpublic use if that person:

3285 (A) works without compensation other than token compensation that is not considered
3286 salary or wages; and

3287 (B) works under the direction of the property owner who engages in building the
3288 structure; and

3289 (ii) for purposes of this Subsection (1)(e), "token compensation" means compensation
3290 paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person
3291 exempted from licensure under this Subsection (1)(e), that is:

3292 (A) minimal in value when compared with the fair market value of the services
3293 provided by the person;

3294 (B) not related to the fair market value of the services provided by the person; and

3295 (C) is incidental to providing of services by the person including paying for or
3296 providing meals or refreshment while services are being provided, or paying reasonable
3297 transportation costs incurred by the person in travel to the site of construction;

3298 (f) a person engaged in the sale or merchandising of personal property that by its design
3299 or manufacture may be attached, installed, or otherwise affixed to real property who has
3300 contracted with a person, firm, or corporation licensed under this chapter to install, affix, or
3301 attach that property;

3302 (g) a contractor submitting a bid on a federal aid highway project, if, before
3303 undertaking construction under that bid, the contractor is licensed under this chapter;

3304 (h) (i) a person engaged in the alteration, repair, remodeling, or addition to or
3305 improvement of a building with a contracted or agreed value of less than \$1,000, including
3306 both labor and materials, and including all changes or additions to the contracted or agreed
3307 upon work;

3308 (ii) notwithstanding Subsection (1)(h)(i):

3309 (A) work in the plumbing and electrical trades must be performed by a licensed
3310 electrician or plumber except as otherwise provided in this section; and

3311 (B) installation, repair, or replacement of a residential or commercial gas appliance or a

3312 combustion system must be performed by a person who has received certification under
3313 Subsection [~~58-55-308~~] 61-2e-308(2) except as otherwise provided in Subsection [~~58-55-308~~]
3314 61-2e-308(2)(d) or [~~58-55-308~~] (3);

3315 (i) a person practicing a specialty contractor classification or construction trade which
3316 is not classified by rule by the director as significantly impacting the public's health, safety, and
3317 welfare;

3318 (j) owners and lessees of property and persons regularly employed for wages by owners
3319 or lessees of property or their agents for the purpose of maintaining the property, are exempt
3320 from this chapter when doing work upon the property;

3321 (k) (i) a person engaged in minor plumbing work incidental to the replacement or
3322 repair of a fixture or an appliance in a residential or small commercial building, or structure
3323 used for agricultural use, as defined in Section [~~58-56-4~~] 61-2f-201, provided that no
3324 modification is made to:

3325 (A) existing culinary water, soil, waste, or vent piping; or

3326 (B) a gas appliance or combustion system; and

3327 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or
3328 an appliance is not included in the exemption provided under Subsection (1)(k)(i);

3329 (l) a person who ordinarily would be subject to the plumber licensure requirements
3330 under this chapter when installing or repairing a water conditioner or other water treatment
3331 apparatus if the conditioner or apparatus:

3332 (i) meets the appropriate state construction codes or local plumbing standards; and

3333 (ii) is installed or repaired under the direction of a person authorized to do the work
3334 under an appropriate specialty contractor license;

3335 (m) a person who ordinarily would be subject to the electrician licensure requirements
3336 under this chapter when employed by or under contract with:

3337 (i) railroad corporations, telephone corporations or their corporate affiliates, elevator
3338 contractors or constructors, or street railway systems; or

3339 (ii) public service corporations, rural electrification associations, or municipal utilities
3340 who generate, distribute, or sell electrical energy for light, heat, or power;

3341 (n) a person involved in minor electrical work incidental to a mechanical or service
3342 installation;

- 3343 (o) a student participating in construction trade education and training programs
3344 approved by the commission with the concurrence of the director under the condition that:
- 3345 (i) all work intended as a part of a finished product on which there would normally be
3346 an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed
3347 building inspector; and
- 3348 (ii) a licensed contractor obtains the necessary building permits; ~~and~~
- 3349 (p) a delivery person when replacing any of the following existing equipment with a
3350 new gas appliance, provided there is an existing gas shutoff valve at the appliance:
- 3351 (i) gas range;
- 3352 (ii) gas dryer;
- 3353 (iii) outdoor gas barbeque; or
- 3354 (iv) outdoor gas patio heater[-];
- 3355 (q) a person serving in the armed forces of the United States, the United States Public
3356 Health Service, the United States Department of Veterans Affairs, or other federal agencies
3357 while engaged in activities regulated under this chapter as a part of employment with that
3358 federal agency if the person holds a valid license to practice a regulated occupation or
3359 profession issued by any other state or jurisdiction recognized by the division;
- 3360 (r) a student engaged in activities constituting the practice of a regulated occupation or
3361 profession while in training in a recognized school approved by the division to the extent the
3362 activities are supervised by qualified faculty, staff, or designee and the activities are a defined
3363 part of the training program;
- 3364 (s) an individual engaged in an internship, residency, preceptorship, postceptorship,
3365 fellowship, apprenticeship, or on-the-job training program approved by the division while
3366 under the supervision of qualified persons;
- 3367 (t) an individual residing in another state and licensed to practice a regulated
3368 occupation or profession in that state, who is called in for a consultation by an individual
3369 licensed in this state, and the services provided are limited to that consultation;
- 3370 (u) an individual who is invited by a recognized school, association, society, or other
3371 body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a
3372 regulated occupation or profession if the individual does not establish a place of business or
3373 regularly engage in the practice of the regulated occupation or profession in this state;

3374 (v) an individual licensed under the laws of this state, other than under this title, to
3375 practice or engage in an occupation or profession, while engaged in the lawful, professional,
3376 and competent practice of that occupation or profession; and

3377 (w) an individual licensed and in good standing in another state, who is in this state:

3378 (i) temporarily, under the invitation and control of a sponsoring entity;

3379 (ii) for a reason associated with a special purpose event, based upon needs that may
3380 exceed the ability of this state to address through its licensees, as determined by the division;
3381 and

3382 (iii) for a limited period of time not to exceed the duration of that event, together with
3383 any necessary preparatory and conclusionary periods.

3384 (2) (a) A compliance agency as defined in Subsection [~~58-56-3(4)~~] 61-2f-103(4) that
3385 issues a building permit to any person requesting a building permit as a sole owner of property
3386 referred to in Subsection (1)(d) shall notify the division, in writing or through electronic
3387 transmission, of the issuance of the building permit.

3388 (b) The division shall evaluate the effectiveness of the notification requirement under
3389 Subsection (2)(a) and report its findings, including any recommendations for modification to or
3390 termination of the requirement, to the Legislature's Business and Labor Interim Committee
3391 prior to the 2008 General Session.

3392 (3) A practitioner temporarily in this state who is exempted from licensure under
3393 Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the
3394 practitioner derives authority to practice. Violation of any limitation imposed by this section
3395 constitutes grounds for removal of exempt status, denial of license, or other disciplinary
3396 proceedings.

3397 Section 41. Section **61-2e-306**, which is renumbered from Section 58-55-306 is
3398 renumbered and amended to read:

3399 ~~[58-55-306].~~ **61-2e-306. Financial responsibility.**

3400 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or
3401 reinstatement of a contractor's license shall demonstrate to the division and the commission the
3402 applicant's or licensee's financial responsibility before the issuance of or the renewal or
3403 reinstatement of a license by:

3404 (a) (i) completing a questionnaire developed by the division; and

3405 (ii) signing the questionnaire, certifying that the information provided is true and
3406 accurate; or

3407 (b) submitting a bond in an amount and form determined by the commission with the
3408 concurrence of the director.

3409 (2) The division may audit an applicant's or licensee's demonstration of financial
3410 responsibility on a random basis or upon finding of a reasonable need.

3411 (3) The burden to demonstrate financial responsibility is upon the applicant or licensee.

3412 Section 42. Section **61-2e-307**, which is renumbered from Section 58-55-307 is
3413 renumbered and amended to read:

3414 ~~[58-55-307]~~. **61-2e-307. Confidentiality of records and reports.**

3415 (1) ~~[Credit reports]~~ A credit report, financial ~~[statements]~~ statement, and other
3416 information submitted to the division by or at the request and direction of an applicant or
3417 licensee for the purpose of supporting a representation of financial responsibility constitute
3418 protected records under Title 63, Chapter 2, Government Records Access and Management
3419 Act.

3420 (2) Notwithstanding Title 63, Chapter 2, Government Records Access and
3421 Management Act, ~~[the records]~~ a record described in Subsection (1) ~~[are]~~ is not:

3422 (a) open for public inspection; and ~~[are not]~~

3423 (b) subject to discovery in civil or administrative proceedings.

3424 Section 43. Section **61-2e-308**, which is renumbered from Section 58-55-308 is
3425 renumbered and amended to read:

3426 ~~[58-55-308]~~. **61-2e-308. Scope of practice -- Installation, repair, or
3427 replacement of gas appliance or combustion system -- Rules.**

3428 (1) (a) The commission, with the concurrence of the director, may adopt reasonable
3429 rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to define and
3430 limit the scope of practice and operating standards of the classifications and subclassifications
3431 licensed under this chapter in a manner consistent with established practice in the relevant
3432 industry.

3433 (b) The commission and the director may limit the field and scope of operations of a
3434 licensee under this chapter in accordance with the rules and the public health, safety, and
3435 welfare, based on the licensee's education, training, experience, knowledge, and financial

3436 responsibility.

3437 (2) (a) The work and scope of practice covered by this Subsection (2) is the
3438 installation, repair, or replacement of a residential or commercial gas appliance or combustion
3439 system.

3440 (b) The provisions of this Subsection (2) apply to any:

3441 (i) licensee under this chapter whose license authorizes the licensee to perform the
3442 work described in Subsection (2)(a); and

3443 (ii) person exempt from licensure under Subsection [~~58-55-305~~] 61-2e-305(1)(h).

3444 (c) Any person described in Subsection (2)(b) that performs work described in
3445 Subsection (2)(a):

3446 (i) must first receive training and certification as specified in rules adopted by the
3447 division; and

3448 (ii) shall ensure that any employee authorized under other provisions of this chapter to
3449 perform work described in Subsection (2)(a) has first received training and certification as
3450 specified in rules adopted by the division.

3451 (d) The division may exempt from the training requirements adopted under Subsection
3452 (2)(c) a person that has adequate experience, as determined by the division.

3453 (3) The division may exempt the following individuals from the certification
3454 requirements adopted under Subsection (2)(c):

3455 (a) a person who has:

3456 (i) passed a test equivalent to the level of testing required by the division for
3457 certification~~];~~ or [~~has~~]

3458 (ii) completed an apprenticeship program that:

3459 (A) teaches the installation of gas line appliances; and

3460 (B) is approved by the Federal Bureau of Apprenticeship Training; and

3461 (b) a person working under the immediate one-to-one supervision of a certified natural
3462 gas technician or a person exempt from certification.

3463 (4) This section does not prohibit a licensed specialty contractor from accepting and
3464 entering into a contract involving the use of two or more crafts or trades if the performance of
3465 the work in the crafts or trades, other than that in which the contractor is licensed, is incidental
3466 and supplemental to the work for which the contractor is licensed.

3467 Section 44. Section **61-2e-309**, which is renumbered from Section 58-55-310 is
3468 renumbered and amended to read:

3469 ~~[58-55-310]~~. **61-2e-309. Requirements when working for political**
3470 **subdivision or state agency.**

3471 Each political subdivision and agency of the state and each board of education [~~which~~]
3472 that requires the issuance of a permit or license as a precondition to the construction, alteration,
3473 improvement, demolition, or other repairs for which a contractor's license is also required
3474 under this chapter shall:

3475 (1) require that each applicant for a permit or license file a signed statement that the
3476 applicant has a current contractor's license with the license number included in the application;

3477 (2) require that any representation of exemption from the contractor's licensing law be
3478 included in the signed statement and that if that exempt person, firm, corporation, association,
3479 or other organization intends to hire a contractor to perform any work under the permit or
3480 license, that the license number of that contractor be included in the application, but if a
3481 contractor has not been selected at the time of the application for a permit or license, the permit
3482 or license shall be issued only on the condition that a currently licensed contractor will be
3483 selected and that the license number of the contractor will be given to the issuing public body
3484 and displayed on the permit or license; and

3485 (3) upon issuance of a permit or license affix the contractor's license number to that
3486 permit or license for public display.

3487 Section 45. Section **61-2e-310**, which is renumbered from Section 58-55-311 is
3488 renumbered and amended to read:

3489 ~~[58-55-311]~~. **61-2e-310. Evidence of licensure as alarm company agent.**

3490 An individual licensed as an alarm company agent shall:

3491 (1) carry a copy of the individual's license on the individual's person at all times while
3492 acting as a licensee; and

3493 (2) display the license upon the request of:

3494 (a) a peace officer[;];

3495 (b) a representative of the division[;]; or

3496 (c) a representative of a customer of the alarm company.

3497 Section 46. Section **61-2e-311**, which is renumbered from Section 58-55-312 is

3498 renumbered and amended to read:

3499 ~~[58-55-312]~~. **61-2e-311. Interim permits for alarm company agent.**

3500 (1) Upon receipt of a complete application for licensure in accordance with Section
3501 ~~[58-55-302]~~ 61-2e-302, an applicant for licensure as an alarm company agent may be issued an
3502 interim permit.

3503 (2) (a) Each interim permit shall expire the earlier of:

3504 (i) 90 days after it is issued; or

3505 (ii) on the date on which the applicant is issued a license~~[, whichever is earlier].~~

3506 (b) The division may reissue an interim permit if the delay in approving a license is
3507 beyond the control or influence of the interim permit holder.

3508 (3) An interim permit holder may engage in the scope of an alarm company agent.
3509 Section 47. Section **61-2e-312** is enacted to read:

3510 **61-2e-312. Division access to Bureau of Criminal Identification records.**

3511 (1) The division shall have direct access to criminal background information
3512 maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau
3513 of Criminal Identification, for background screening of licensure applicants as required in
3514 Section 61-2e-302 as it applies to alarm companies and alarm company agents.

3515 (2) The division access under Subsection (1) shall be in accordance with Section
3516 53-10-108.

3517 Section 48. Section **61-2e-313** is enacted to read:

3518 **61-2e-313. License by endorsement.**

3519 (1) The division may issue a license without examination to a person who has been
3520 licensed in any state, district, or territory of the United States or in any foreign country, whose
3521 education, experience, and examination requirements are, or were at the time the license was
3522 issued, equal to those of this state.

3523 (2) Before any person may be issued a license under this section, that person shall
3524 produce satisfactory evidence of the person's qualifications, identity, and good standing in the
3525 person's occupation or profession.

3526 Section 49. Section **61-2e-314** is enacted to read:

3527 **61-2e-314. Temporary license.**

3528 (1) (a) The division may issue a temporary license to a person who has met all license

3529 requirements except the passing of an examination. In this case:

3530 (i) the licensee shall take the next available examination; and

3531 (ii) the temporary license automatically expires upon release of official examination
3532 results if the applicant fails the examination.

3533 (b) The division may issue a temporary license to a person licensed in another state or
3534 country who is in Utah temporarily to teach or assist a Utah resident licensed to practice an
3535 occupation or profession under this chapter.

3536 (c) The division may issue a temporary license to a person licensed in another state
3537 who met the requirements for licensure in that state, which were equal to or greater than the
3538 requirements for licensure of this state at the time the license was obtained in the other state,
3539 upon a finding by the division, in collaboration with the appropriate board, that the issuance of
3540 a temporary license is necessary to or justified by:

3541 (i) a local or national emergency or any governmental action causing an unusual
3542 circumstance that might be reasonably considered to materially jeopardize the public health,
3543 safety, or welfare if a temporary license is not issued;

3544 (ii) a lack of necessary available services in any community or area of the state from an
3545 occupation or profession licensed under this title, if the lack of services might be reasonably
3546 considered to materially jeopardize the public health, safety, or welfare if a temporary license is
3547 not issued; or

3548 (iii) a need to first observe an applicant for licensure in this state in a monitored or
3549 supervised practice of the applicant's occupation or profession before a decision is made by the
3550 division either to grant or deny the applicant a regular license.

3551 (2) The division may not issue a temporary license to a person who qualifies for one
3552 under Subsection (1)(a) more than three consecutive times within the three-year period
3553 immediately following the issuance of the first temporary license.

3554 (3) The division may not issue a temporary license to a person solely because there is a
3555 competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by
3556 the absence of a licensed person, unless in addition there is or will be a material risk presented
3557 to the public health, safety, or welfare.

3558 Section 50. Section **61-2e-315** is enacted to read:

3559 **61-2e-315. Restricted license.**

3560 (1) The division may issue a restricted license to an applicant for licensure, renewal, or
3561 reinstatement of licensure if:

3562 (a) the applicant appears to meet the qualifications for licensure, but has engaged in
3563 unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and

3564 (b) the division determines the need to observe the applicant in a monitored or
3565 supervised practice of the applicant's occupation or profession or to attach other reasonable
3566 restrictions upon the applicant in order to accommodate licensure, while protecting the public
3567 health, safety, and welfare.

3568 (2) Issuance of a restricted license is considered a partial denial of licensure that is
3569 subject to agency review.

3570 Section 51. Section **61-2e-316** is enacted to read:

3571 **61-2e-316. Inactive license.**

3572 (1) (a) The commission with the concurrence of the director may adopt rules permitting
3573 inactive licensure.

3574 (b) The rules allowed under this Subsection (1) shall specify:

3575 (i) the requirements and procedures for placing a license on inactive status;

3576 (ii) the length of time a license may remain on inactive status; and

3577 (iii) the requirements and procedures to activate an inactive license.

3578 (2) Except as otherwise specified by rule, an inactive licensee has no right or privilege
3579 to engage in the practice of the licensed occupation or profession.

3580 Section 52. Section **61-2e-317** is enacted to read:

3581 **61-2e-317. Surrender of license.**

3582 (1) The division may, by written agreement, accept the voluntary surrender of a license.

3583 (2) Unless otherwise stated in the written agreement, tender and acceptance of a
3584 voluntary surrender of a license does not foreclose the division from pursuing additional
3585 disciplinary or other action authorized under this chapter or in rules adopted under this chapter.

3586 (3) Unless otherwise stated in the written agreement, tender and acceptance of a
3587 voluntary surrender of a license terminates all rights and privileges associated with the license.

3588 (4) Unless otherwise stated in the written agreement, the surrendered rights and
3589 privileges of licensure may be reacquired only by reapplying for licensure and meeting the
3590 requirements for a new or reinstated license set forth under this chapter or in rules adopted

3591 under this chapter.

3592 (5) Unless otherwise stated in the written agreement, documentation of tender and
 3593 acceptance of a voluntary surrender of a license is a public record.

3594 (6) Unless otherwise stated in the written agreement, when a tender and acceptance of a
 3595 voluntary surrender of a license occurs while adjudicative proceedings are pending against the
 3596 licensee for unprofessional or unlawful conduct, the division may report the surrender of a
 3597 license to appropriate state and federal agencies and licensing data banks.

3598 Section 53. Section **61-2e-401**, which is renumbered from Section 58-55-401 is
 3599 renumbered and amended to read:

3600 **Part 4. License Denial and Discipline**

3601 ~~[58-55-401].~~ **61-2e-401. Grounds for denial of license and disciplinary**
 3602 **proceedings.**

3603 ~~[The]~~ (1) In accordance with this section, the division may:

3604 (a) refuse to issue a license to an applicant;

3605 (b) refuse to renew the license of a licensee;

3606 (c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund
 3607 created by Section 38-11-201;

3608 (d) revoke, suspend, restrict, or place on probation the license of a licensee;

3609 (e) issue a public or private reprimand to a licensee; and

3610 (f) issue a cease and desist orders order[~~; in accordance with Section 58-1-401~~].

3611 (2) If a licensee does not meet the qualifications for licensure under this chapter, the
 3612 division shall:

3613 (a) refuse to issue a license to an applicant;

3614 (b) refuse to renew a license;

3615 (c) revoke, suspend, restrict, or place on probation the license of a licensee; or

3616 (d) otherwise act upon the license.

3617 (3) The division may take an action described in Subsection (1) when a person violates
 3618 this chapter including in any of the following cases:

3619 (a) the applicant or licensee has engaged in unprofessional conduct as defined by
 3620 Section 61-2e-502 or rule under this chapter;

3621 (b) the applicant or licensee has engaged in unlawful conduct as defined by Section

3622 61-2e-501;

3623 (c) the applicant or licensee has been determined to be mentally incompetent for any
3624 reason by a court of competent jurisdiction; or

3625 (d) the applicant or licensee is unable to practice the occupation or profession with
3626 reasonable skill and safety because of:

3627 (i) illness;

3628 (ii) drunkenness;

3629 (iii) excessive use of drugs, narcotics, chemicals, or any other type of material; or

3630 (iv) any other mental or physical condition, when the licensee's condition demonstrates
3631 a threat or potential threat to the public health, safety, or welfare.

3632 (4) Any licensee whose license to practice an occupation or profession regulated by
3633 this chapter has been suspended, revoked, or restricted may apply for reinstatement of the
3634 license at reasonable intervals and upon compliance with any conditions imposed upon the
3635 licensee by statute, rule, or terms of the license suspension, revocation, or restriction.

3636 (5) The division may issue cease and desist orders:

3637 (a) to a licensee or applicant who may be disciplined under Subsection (2) or (3);

3638 (b) to any person who engages in or represents himself to be engaged in an occupation
3639 or profession regulated under this chapter; and

3640 (c) to any person who otherwise violates this chapter or any rules adopted under this
3641 chapter.

3642 (6) (a) The division may not take disciplinary action against any person for
3643 unprofessional or unlawful conduct under this chapter, unless the division initiates an
3644 adjudicative proceeding regarding the conduct within four years after the conduct is reported to
3645 the division, except under Subsection (6)(b).

3646 (b) The division may not take disciplinary action against any person for unprofessional
3647 or unlawful conduct more than ten years after the occurrence of the conduct, unless the
3648 proceeding is in response to a civil or criminal judgment or settlement and the proceeding is
3649 initiated within one year following the judgment or settlement.

3650 Section 54. Section **61-2e-402**, which is renumbered from Section 58-55-402 is
3651 renumbered and amended to read:

3652 **[58-55-402]. 61-2e-402. Enforcement -- Investigation of regulated activity.**

3653 (1) The division shall be responsible for the investigation of persons and activities in
3654 violation of the provisions of this chapter.

3655 (2) Investigation by the division shall include investigations of:

3656 (a) licensees engaged in unlawful or unprofessional conduct; and

3657 (b) unlicensed persons engaged in the conduct of activity or work regulated under this
3658 chapter and for which a license is required.

3659 (3) The division shall decline to proceed with investigation of the violation of any
3660 provisions of this chapter if the division finds there is no apparent material jeopardy to the
3661 public health, safety, and welfare.

3662 (4) The division shall have no responsibility for the inspection of construction work
3663 performed in the state to determine compliance with applicable codes, or industry and
3664 workmanship standards, except as provided in Subsections ~~[58-1-501(2)(g), 58-55-502]~~
3665 61-2e-501(16) and 61-2e-502(2), (3), [and] (4), and [58-55-501(16)] (14).

3666 (5) ~~[Authorized representatives]~~ An authorized representative of the division shall be
3667 permitted to enter upon the premises or site of work regulated under this chapter for the
3668 purpose of determining compliance with ~~[the provisions of]~~ this chapter.

3669 Section 55. Section **61-2e-403**, which is renumbered from Section 58-55-403 is
3670 renumbered and amended to read:

3671 ~~[58-55-403].~~ **61-2e-403. Minimum time for division action.**

3672 The division has at least five working days after receiving an application for licensure
3673 to determine whether to issue a license under this chapter.

3674 Section 56. Section **61-2e-404** is enacted to read:

3675 **61-2e-404. Administrative review -- Special appeals boards.**

3676 (1) (a) Any applicant may submit a request for agency review to the executive director
3677 within 30 days following notification of the denial of a license or refusal to renew or reinstate a
3678 license if the applicant:

3679 (i) has been denied a license to practice on the basis of:

3680 (A) credentials;

3681 (B) character; or

3682 (C) failure to pass a required examination; or

3683 (ii) has been refused renewal or reinstatement of a license to practice on the basis that

3684 the applicant does not meet qualifications for continued licensure in any occupation or
3685 profession governed by this chapter.

3686 (b) The executive director shall determine whether the circumstances for denying an
3687 application for an initial license or for renewal or reinstatement of a license would justify
3688 calling a special appeals board under Subsection (2). The executive director's decision is not
3689 subject to agency review.

3690 (2) A special appeals board shall consist of three members appointed by the executive
3691 director as follows:

3692 (a) one member from the occupation or profession in question who is not on the board
3693 of that occupation or profession;

3694 (b) one member from the general public who is neither an attorney nor a practitioner in
3695 an occupation or profession regulated by the division; and

3696 (c) one member who is a resident lawyer currently licensed to practice law in this state
3697 who shall serve as chair of the special appeals board.

3698 (3) The special appeals board shall comply with the procedures and requirements of
3699 Title 63, Chapter 46b, Administrative Procedures Act, in its proceedings.

3700 (4) (a) Within a reasonable amount of time following the conclusion of a hearing
3701 before a special appeals board, the board shall enter an order based upon the record developed
3702 at the hearing. The order shall state whether a legal basis exists for denying the application for
3703 an initial license or for renewal or reinstatement of a license that is the subject of the appeal.
3704 The order is not subject to further agency review.

3705 (b) The division or the applicant may obtain judicial review of the decision of the
3706 special appeals board in accordance with Sections 63-46b-14 and 63-46b-16.

3707 (5) (a) A member of the board shall receive no compensation or benefits for the
3708 member's services, but may receive per diem and expenses incurred in the performance of the
3709 member's official duties at the rates established by the Division of Finance under Sections
3710 63A-3-106 and 63A-3-107.

3711 (b) A member may decline to receive per diem and expenses for the member's service.

3712 (6) If an applicant under Subsection (1) is not given a special appeals board, the
3713 applicant shall be given agency review under the ordinary agency review procedures specified
3714 by rule.

3715 Section 57. Section **61-2e-405** is enacted to read:

3716 **61-2e-405. Minimum 90-day suspension.**

3717 A license may not be reinstated subsequent to action taken under Section 61-2e-401
3718 within 90 days after the action has been taken, unless the division in collaboration with the
3719 appropriate board imposes other conditions.

3720 Section 58. Section **61-2e-406** is enacted to read:

3721 **61-2e-406. Diversion -- Procedure.**

3722 (1) As used in this section:

3723 (a) "Diversion" means suspending action to discipline a licensee who is or could be
3724 charged in a Notice of Agency Action with certain offenses within the category of
3725 unprofessional or unlawful conduct on the condition that the licensee agrees to participate in an
3726 educational or rehabilitation program or fulfill some other condition.

3727 (b) "Diversion agreement" means a written agreement between the division, through its
3728 director, and the licensee, that specifies formal terms and conditions the licensee must fulfill in
3729 order to comply with the diversion program.

3730 (2) (a) (i) The director may establish, as circumstances require, a diversion advisory
3731 committee for each occupation or profession or similar groups of occupations or professions
3732 licensed by the division under this chapter.

3733 (ii) The committees shall assist the director in the administration of this section.

3734 (b) (i) Each committee shall consist of at least three licensees from the same or similar
3735 occupation or profession as the person whose conduct is the subject of the committee's
3736 consideration.

3737 (ii) The director shall appoint the members of a diversion advisory committee from
3738 nominations submitted by the corresponding board established for the same or similar
3739 occupation or profession under Section 61-2e-201 or from other qualified nominees developed
3740 by or submitted to the division.

3741 (iii) Committee members may not serve concurrently as members of the corresponding
3742 board.

3743 (iv) Committee members shall serve voluntarily without remuneration.

3744 (v) The director may:

3745 (A) dissolve any diversion advisory committee;

3746 (B) remove or request the replacement of any member of a committee; and

3747 (C) establish any procedure that is necessary and proper for a committee's

3748 administration.

3749 (3) The director may, after consultation with the appropriate diversion advisory

3750 committee and by written agreement with the licensee, divert the licensee to a diversion

3751 program:

3752 (a) at any time after receipt by the division of a complaint against the licensee when no
3753 adjudicative proceeding has been commenced;

3754 (b) at any time prior to the conclusion of a hearing under Section 63-46b-8 when an
3755 adjudicative proceeding has been commenced against the licensee; or

3756 (c) after a self-referral by a licensee who is not the subject of a current investigation,
3757 complaint, or adjudicative proceeding.

3758 (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
3759 the division shall define by rule the particular offenses within the category of unprofessional or
3760 unlawful conduct which may be subject to diversion.

3761 (b) A licensee may be eligible for a diversion program only once for the same or
3762 similar offense, whether the diversion program was in this state or another jurisdiction, and is
3763 not eligible if previously disciplined by the division, by a licensing agency of another state, or
3764 by a federal government agency for the same or a similar offense.

3765 (c) The term of a diversion agreement shall be five years or less, but may be extended
3766 for an additional period of time as agreed to by the parties in writing.

3767 (d) A decision by the director not to divert a licensee is not subject to appeal or judicial
3768 review.

3769 (5) A licensee may be represented by counsel:

3770 (a) during the negotiations for diversion;

3771 (b) at the time of the execution of the diversion agreement; and

3772 (c) at any hearing before the director relating to a diversion program.

3773 (6) (a) (i) A diversion agreement shall contain, a full detailed:

3774 (A) statement of the requirements agreed to by the licensee; and

3775 (B) stipulation of the facts upon which the diversion agreement is premised.

3776 (ii) The facts stipulated in the diversion agreement shall constitute binding admissions

3777 of the licensee:

3778 (A) in any proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion
3779 agreement and impose disciplinary sanctions against the licensee; and

3780 (B) in any disciplinary proceeding based on unprofessional or unlawful conduct that is
3781 not the basis of the diversion agreement.

3782 (b) The diversion agreement shall provide that if the licensee makes an intentional
3783 material misrepresentation of fact in the stipulation of facts contained in the diversion
3784 agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the
3785 diversion agreement and issue an order of license revocation.

3786 (c) (i) The diversion agreement shall provide that if the licensee fails to comply with its
3787 terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the
3788 diversion agreement and issue an order of license suspension, which shall be stayed in favor of
3789 an order of probation having the same terms as those which comprised the diversion
3790 agreement.

3791 (ii) The division may waive and not include as probationary requirements any terms of
3792 the diversion agreement it does not consider necessary to protect the public.

3793 (iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).

3794 (d) The division director may not approve a diversion agreement unless the licensee, as
3795 part of the diversion agreement:

3796 (i) knowingly and intelligently waives the right to a hearing under Title 63, Chapter
3797 46b, Administrative Procedures Act, for the conduct upon which the diversion agreement was
3798 premised;

3799 (ii) agrees to be subject to the procedures and remedies set forth in this section;

3800 (iii) acknowledges an understanding of the consequences of making an intentional
3801 misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and

3802 (iv) acknowledges an understanding of the consequences of failing to comply with the
3803 terms of the diversion agreement.

3804 (7) (a) If the division and the licensee enter into a diversion agreement after the
3805 division has commenced an adjudicative proceeding against the licensee, the director shall stay
3806 that proceeding pending completion of the diversion agreement.

3807 (b) The order staying the adjudicative proceeding:

3808 (i) shall be filed in that proceeding; and
3809 (ii) may reference the diversion agreement.
3810 (8) (a) Upon successful completion of a diversion agreement, the director shall dismiss
3811 any charges under the director's jurisdiction of unprofessional or unlawful conduct that were
3812 filed against the licensee.
3813 (b) Whether or not an adjudicative proceeding had been commenced against the
3814 licensee, the division may not thereafter subject the licensee to disciplinary action for the
3815 conduct which formed the basis of the completed diversion agreement.
3816 (c) Neither the execution of a diversion agreement nor the dismissal of filed charges
3817 constitute disciplinary action, and no report of either may be made to disciplinary databases.
3818 (d) The division may consider the completion of a diversion program and the contents
3819 of the diversion agreement in determining the appropriate disciplinary action if the licensee is
3820 charged in the future with the same or similar conduct.
3821 (e) The order of dismissal shall be filed in the adjudicative proceeding in which the
3822 misconduct was charged and may reference the diversion agreement.
3823 (9) (a) Acceptance of the licensee into diversion does not preclude the division from
3824 investigating or continuing to investigate the licensee for any unlawful or unprofessional
3825 conduct committed before, during, or after participation in the diversion program.
3826 (b) Acceptance of the licensee into diversion does not preclude the division from
3827 taking disciplinary action or continuing to take disciplinary action against the licensee for
3828 unlawful or unprofessional conduct committed before, during, or after participation in the
3829 diversion program, except for that conduct that formed the basis for the diversion agreement.
3830 (c) Any licensee terminated from the diversion program for failure to comply with the
3831 diversion agreement is subject to disciplinary action by the division for acts committed before,
3832 during, and after participation in the diversion program, including violations identified in the
3833 diversion agreement.
3834 (10) The classification, retention, and disclosure of records relating to a licensee's
3835 participation in the diversion program is governed by Title 63, Chapter 2, Government Records
3836 Access and Management Act, except that any provision in the diversion agreement that
3837 addresses access to or release of diversion records regarding the licensee shall govern the
3838 access to and release of those records.

3839 (11) Notwithstanding any other provision of this section, the fact that the licensee
3840 completed a diversion program and the contents of the diversion agreement itself may be
3841 considered by the division in determining the appropriate disciplinary action if the licensee is
3842 charged in the future with the same or similar conduct.

3843 (12) A meeting regarding the diversion program is not subject to Title 52, Chapter 4,
3844 Open and Public Meetings.

3845 (13) (a) If, during the course of the diversion agreement, information is brought to the
3846 attention of the director that the licensee made an intentional material misrepresentation of fact
3847 in the stipulation of facts contained in the diversion agreement, the director shall cause to be
3848 served upon the licensee an order to show cause:

3849 (i) specifying the information relied upon by the director; and

3850 (ii) setting a time and place for hearing to determine:

3851 (A) whether or not the licensee made the intentional material misrepresentation of fact;
3852 and

3853 (B) whether the agreement should be terminated on that ground.

3854 (b) Proceedings to terminate a diversion agreement on the grounds that the licensee
3855 made an intentional material misrepresentation of fact in the stipulation of facts contained in
3856 the diversion agreement and to issue an order of license revocation shall comply with Title 63,
3857 Chapter 46b, Administrative Procedures Act, except as follows:

3858 (i) the notice of agency action shall be in the form of an order to show cause, which
3859 shall contain all of the information specified in Subsection 63-46b-3(2), except a statement that
3860 a written response to the order to show cause is required;

3861 (ii) a written response to the order to show cause is not required;

3862 (iii) discovery is prohibited, but:

3863 (A) the division may issue subpoenas or other orders to compel production of
3864 necessary evidence on behalf of either party; and

3865 (B) all parties shall have access to information contained in the division's diversion file
3866 to the extent permitted by law;

3867 (iv) the hearing shall be held only after timely notice to all parties; and

3868 (v) any agency review or reconsideration of an order terminating a diversion agreement
3869 or of an order of license revocation pursuant to this Subsection (13) shall be limited to the

3870 division director's findings of fact, conclusions of law, and order which arose out of the order
3871 to show cause proceeding.

3872 (c) The director shall issue an order of license revocation, revoking the licensee's
3873 professional license upon:

3874 (i) finding the licensee made an intentional material misrepresentation of fact in the
3875 stipulation of facts contained in the diversion agreement;

3876 (ii) finding that terminating the agreement is in the best interest of the public; and

3877 (iii) issuing an order to that effect.

3878 (d) The order terminating the diversion agreement and the order of license revocation
3879 shall include findings of fact and conclusions of law as determined by the director following
3880 the hearing or as otherwise stipulated and agreed to by the parties.

3881 (e) If the diversion agreement being terminated is entered into after the division has
3882 commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall
3883 be considered to be merged into the order of license revocation and it may not constitute a basis
3884 for any separate disciplinary action against the licensee.

3885 (f) The order terminating the diversion agreement and the order of license revocation
3886 shall notify the licensee of the right to request agency review or reconsideration.

3887 (14) (a) If, during the course of the diversion agreement, information is brought to the
3888 attention of the director that the licensee has violated the diversion agreement and if it appears
3889 in the best interest of the public to proceed with charges, the director, after consultation with
3890 the diversion advisory committee, shall cause to be served upon the licensee an order to show
3891 cause:

3892 (i) specifying the facts relied upon by the director; and

3893 (ii) setting a time and place for hearing to determine:

3894 (A) whether or not the licensee has violated the diversion agreement; and

3895 (B) whether the agreement should be terminated.

3896 (b) Proceedings to terminate a diversion agreement and to issue an order of license
3897 suspension and probation, and proceedings to terminate the probation and lift the stay of a
3898 license suspension, shall comply with Title 63, Chapter 46b, Administrative Procedures Act,
3899 except as follows:

3900 (i) the notice of agency action shall be in the form of an order to show cause, which

3901 shall contain all of the information specified in Subsection 63-46b-3(2), except a statement that
3902 a written response to the order to show cause is required;

3903 (ii) a written response to the order to show cause is not required;

3904 (iii) discovery is prohibited, but:

3905 (A) the division may issue subpoenas or other orders to compel production of
3906 necessary evidence on behalf of either party; and

3907 (B) all parties shall have access to information contained in the division's diversion file
3908 to the extent permitted by law;

3909 (iv) the hearing shall be held only after timely notice to all parties; and

3910 (v) any agency review or reconsideration of an order terminating a diversion agreement
3911 or of an order of license suspension and probation pursuant to this Subsection (14) shall be
3912 limited to the division director's findings of fact, conclusions of law, and order which arose out
3913 of the order to show cause proceeding.

3914 (c) (i) Upon finding the licensee has violated the diversion agreement and that
3915 terminating the agreement is in the best interest of the public, and issuing an order to that
3916 effect, the director shall issue an order of license suspension, suspending the licensee's
3917 professional license, but shall stay that suspension in favor of an order of probation, consisting
3918 of the same terms as those which comprised the diversion agreement.

3919 (ii) The period of probation, unless otherwise agreed to by the parties shall be the
3920 longer of:

3921 (A) the time period that remains under the diversion agreement; or

3922 (B) five years from the date of the order of license suspension and probation.

3923 (iii) The period of probation is tolled during any time in which the licensee does not
3924 have an active license in the state.

3925 (d) (i) The order terminating the diversion agreement and the order of license
3926 suspension and probation shall include findings of fact and conclusions of law as determined
3927 by the director following the hearing or as otherwise stipulated and agreed to by the parties.

3928 (ii) The findings of fact may include those facts to which the licensee stipulated in the
3929 diversion agreement and any additional facts as the director may determine in the course of the
3930 hearing.

3931 (e) If the diversion agreement being terminated is entered into after the division has

3932 commenced an adjudicative proceeding against the licensee:

3933 (i) that adjudicative proceeding shall be considered to be merged into the order of
3934 license suspension and probation; and

3935 (ii) may not constitute a basis for any separate disciplinary action against the licensee.

3936 (f) The order terminating the diversion agreement and the order of license suspension
3937 and probation shall notify the licensee of the right to request agency review or reconsideration.

3938 (g) (i) The terms and conditions of the order of license suspension and probation may
3939 be amended by order of the director, pursuant to motion or stipulation of the parties.

3940 (ii) The order of the director on the motion is not subject to agency review, but is
3941 subject to agency reconsideration under Section 63-46b-13.

3942 (h) (i) If, during the course of probation, the director has reason to believe the licensee
3943 has violated the order of suspension and probation, the director shall cause to be served upon
3944 the licensee an order to show cause why the probation should not be terminated and the stay of
3945 suspension lifted.

3946 (ii) The order to show cause shall specify the facts relied upon by the director and shall
3947 set a time and place for hearing before the director to determine:

3948 (A) whether or not the licensee has violated the order of suspension and probation; and

3949 (B) whether that order should be terminated and the stay of suspension lifted.

3950 (15) (a) Nothing in this section precludes the division from issuing an emergency order
3951 pursuant to Section 63-46b-20.

3952 (b) If the division issues an emergency order against a licensee who is subject to a
3953 diversion agreement with the division, that diversion agreement shall be immediately and
3954 automatically terminated upon the issuance of the emergency order, without compliance with
3955 Title 63, Chapter 46b, Administrative Procedures Act.

3956 (c) (i) A licensee whose diversion agreement has been terminated pursuant to
3957 Subsection (15)(b) is entitled, upon request, to a posttermination hearing to challenge the
3958 termination of the diversion agreement.

3959 (ii) The request shall be considered a request for agency action and shall comply with
3960 the requirements of Subsection 63-46b-3(3).

3961 (iii) The division shall uphold the termination of the diversion agreement if it finds
3962 that:

- 3963 (A) the licensee violated the diversion agreement; and
- 3964 (B) it is in the best interest of the public to terminate the diversion agreement.
- 3965 (16) The administrative statute of limitations for taking disciplinary action described in
- 3966 Subsection 58-1-401(5) shall be tolled during a diversion program.

3967 Section 59. Section **61-2e-501 (Effective 07/01/05)**, which is renumbered from Section
3968 58-55-501 (Effective 07/01/05) is renumbered and amended to read:

3969 **Part 5. Unprofessional and Unlawful Conduct -- Penalties**

3970 ~~[58-55-501 (Effective 07/01/05)].~~ **61-2e-501 (Effective 07/01/05). Unlawful**
3971 **conduct.**

3972 Unlawful conduct includes:

3973 (1) engaging in a construction trade, acting as a contractor, an alarm business or
3974 company, or an alarm company agent, or representing oneself to be engaged in a construction
3975 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
3976 person doing any of these is appropriately licensed or exempted from licensure under this
3977 chapter;

3978 (2) acting in a construction trade, as an alarm business or company, or as an alarm
3979 company agent beyond the scope of the license held;

3980 (3) hiring or employing in any manner an unlicensed person, other than an employee
3981 for wages who is not required to be licensed under this chapter, to engage in a construction
3982 trade for which licensure is required or to act as a contractor or subcontractor in a construction
3983 trade requiring licensure;

3984 (4) applying for or obtaining a building permit either for oneself or another when not
3985 licensed or exempted from licensure as a contractor under this chapter;

3986 (5) issuing a building permit to any person for whom there is no evidence of a current
3987 license or exemption from licensure as a contractor under this chapter;

3988 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
3989 other person who is required to be licensed under this chapter but who is not licensed or is
3990 otherwise not entitled to obtain or receive the benefit of the building permit;

3991 (7) failing to obtain a building permit when required by law or rule;

3992 (8) submitting a bid for any work for which a license is required under this chapter by a
3993 person not licensed or exempted from licensure as a contractor under this chapter;

- 3994 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
3995 with an application to obtain or renew a license under this chapter;
- 3996 (10) allowing one's license to be used by another except as provided by statute or rule;
- 3997 (11) doing business under a name other than the name appearing on the license, except
3998 as permitted by statute or rule;
- 3999 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
4000 journeyman plumber, residential journeyman plumber, journeyman electrician, master
4001 electrician, or residential electrician, failing to directly supervise an apprentice under one's
4002 supervision or exceeding the number of apprentices one is allowed to have under his
4003 supervision;
- 4004 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
4005 funds in payment for a specific project from an owner or any other person, which funds are to
4006 pay for work performed or materials and services furnished for that specific project, and after
4007 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
4008 amounts due and payable to persons who performed work or furnished materials or services
4009 within a reasonable period of time;
- 4010 (14) employing as an alarm company an unlicensed individual as an alarm company
4011 agent, except as permitted under the exemption from licensure provisions under Section
4012 ~~[58-1-307]~~ 61-2e-305;
- 4013 (15) if licensed as an alarm company or alarm company agent, filing with the division
4014 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
4015 false or fraudulent and intended to mislead the division in its consideration of the applicant for
4016 licensure;
- 4017 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
- 4018 (a) the building or construction laws of this state or any political subdivision;
- 4019 (b) the safety and labor laws applicable to a project;
- 4020 (c) any provision of the health laws applicable to a project;
- 4021 (d) the workers' compensation insurance laws of the state applicable to a project;
- 4022 (e) the laws governing withholdings for employee state and federal income taxes,
4023 unemployment taxes, FICA, or other required withholdings; or
- 4024 (f) reporting, notification, and filing laws of this state or the federal government;

4025 (17) aiding or abetting any person in evading the provisions of this chapter or rules
4026 established under the authority of the division to govern this chapter;

4027 (18) engaging in the construction trade or as a contractor for the construction of
4028 residences of up to two units when not currently registered or exempt from registration as a
4029 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
4030 Fund Act;

4031 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
4032 written contract the notification required in Section 38-11-108;

4033 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25; ~~or~~

4034 (21) if licensed as a contractor, not completing a three-hour core education class and an
4035 additional three hours of professional education approved by the division and the Construction
4036 Services Commission within each two-year renewal cycle, beginning with the two-year renewal
4037 cycle that starts July 1, 2005, and ends June 30, 2007;

4038 (a) unless an exemption has been granted to the licensee by the Construction Services
4039 Commission, with the concurrence of the division~~;~~; and

4040 (b) except that:

4041 (i) this Subsection (21) is repealed effective July 1, 2010; and ~~its~~

4042 (ii) implementation of this Subsection (21) is subject to the division receiving adequate
4043 funding for its implementation through a legislative appropriation~~;~~;

4044 (22) practicing or engaging in, representing oneself to be practicing or engaging in, or
4045 attempting to practice or engage in any occupation or profession requiring licensure under this
4046 chapter if the person is:

4047 (a) (i) not licensed to do so; or

4048 (ii) not exempted from licensure under this chapter; or

4049 (b) restricted from doing so by a suspended, revoked, restricted, temporary,
4050 probationary, or inactive license;

4051 (23) impersonating another licensee or practicing an occupation or profession under a
4052 false or assumed name, except as permitted by law;

4053 (24) knowingly permitting the person's authority to practice or engage in any
4054 occupation or profession licensed under this chapter to be used by another, except as permitted
4055 by law; or

4056 (25) obtaining a passing score on a licensure examination, applying for or obtaining a
4057 license, or otherwise dealing with the division or a licensing board through the use of:

4058 (a) fraud;

4059 (b) forgery; or

4060 (c) intentional deception, misrepresentation, misstatement, or omission.

4061 Section 60. Section **61-2e-502**, which is renumbered from Section 58-55-502 is
4062 renumbered and amended to read:

4063 ~~[58-55-502].~~ **61-2e-502. Unprofessional conduct.**

4064 Unprofessional conduct means conduct, by a licensee or applicant, that is defined as
4065 unprofessional conduct under this section or under any rule adopted under this section and
4066 includes:

4067 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed
4068 as a contractor under this chapter;

4069 (2) disregarding or violating through gross negligence or a pattern of negligence:

4070 (a) the building or construction laws of this state or any political subdivision;

4071 (b) the safety and labor laws applicable to a project;

4072 (c) any provision of the health laws applicable to a project;

4073 (d) the workers' compensation insurance laws of this state applicable to a project;

4074 (e) the laws governing withholdings for employee state and federal income taxes,
4075 unemployment taxes, FICA, or other required withholdings; or

4076 (f) any reporting, notification, and filing laws of this state or the federal government;

4077 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
4078 licensee's direction which causes material injury to another;

4079 (4) contract violations that pose a threat or potential threat to the public health, safety,
4080 and welfare including:

4081 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
4082 specifications, or abandonment or failure to complete a project without the consent of the
4083 owner or his duly authorized representative or the consent of any other person entitled to have
4084 the particular project completed in accordance with the plans, specifications, and contract
4085 terms;

4086 (b) failure to deposit funds to the benefit of an employee as required under any written

4087 contractual obligation the licensee has to the employee;

4088 (c) failure to maintain in full force and effect any health insurance benefit to an
4089 employee that was extended as a part of any written contractual obligation or representation by
4090 the licensee, unless the employee is given written notice of the licensee's intent to cancel or
4091 reduce the insurance benefit at least 45 days before the effective date of the cancellation or
4092 reduction;

4093 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section
4094 38-11-207;

4095 (e) failure to provide, when applicable, the information required by Section 38-11-108;
4096 and

4097 (f) willfully or deliberately misrepresenting or omitting a material fact in connection
4098 with an application to claim recovery from the Residence Lien Recovery Fund under Section
4099 38-11-204;

4100 (5) failing as an alarm company to notify the division of the cessation of performance
4101 of its qualifying agent, or failing to replace its qualifying agent as required under Section
4102 ~~[58-55-304]~~ 61-2e-304;

4103 (6) failing as an alarm company agent to carry or display a copy of the licensee's
4104 license as required under Section ~~[58-55-311]~~ 61-2e-310; ~~[or]~~

4105 (7) failing to comply with operating standards established by rule in accordance with
4106 Section ~~[58-55-308.]~~ 61-2e-308;

4107 (8) violating, or aiding or abetting any other person to violate, any statute, rule, or order
4108 regulating an occupation or profession under this chapter;

4109 (9) violating, or aiding or abetting any other person to violate, any generally accepted
4110 professional or ethical standard applicable to an occupation or profession regulated under this
4111 chapter;

4112 (10) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
4113 of guilty or nolo contendere that is held in abeyance pending the successful completion of
4114 probation with respect to a crime of moral turpitude or any other crime that, when considered
4115 with the functions and duties of the occupation or profession for which the license was issued
4116 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely
4117 or competently practice the occupation or profession;

4118 (11) engaging in conduct that results in disciplinary action, including reprimand,
4119 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory
4120 authority having jurisdiction over the licensee or applicant in the same occupation or profession
4121 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
4122 proceedings under Section 61-2e-401;

4123 (12) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
4124 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
4125 ability of the licensee or applicant to safely engage in the occupation or profession;

4126 (13) practicing or attempting to practice an occupation or profession regulated under
4127 this chapter despite being physically or mentally unfit to do so;

4128 (14) practicing or attempting to practice an occupation or profession regulated under
4129 this chapter through gross incompetence, gross negligence, or a pattern of incompetency or
4130 negligence;

4131 (15) practicing or attempting to practice an occupation or profession requiring
4132 licensure under this chapter by any form of action or communication which is false,
4133 misleading, deceptive, or fraudulent;

4134 (16) practicing or attempting to practice an occupation or profession regulated under
4135 this chapter beyond the scope of the licensee's competency, abilities, or education;

4136 (17) practicing or attempting to practice an occupation or profession regulated under
4137 this chapter beyond the scope of the licensee's license;

4138 (18) verbally, physically, mentally, or sexually abusing or exploiting any person
4139 through conduct connected with the licensee's practice under this title or otherwise facilitated
4140 by the licensee's license; or

4141 (19) acting as a supervisor without meeting the qualification requirements for that
4142 position that are defined by statute or rule.

4143 Section 61. Section **61-2e-503 (Effective 07/01/05)**, which is renumbered from Section
4144 58-55-503 (Effective 07/01/05) is renumbered and amended to read:

4145 ~~[58-55-503 (Effective 07/01/05)].~~ **61-2e-503 (Effective 07/01/05). Penalty for**
4146 **unlawful conduct -- Citations.**

4147 (1) (a) Any person who violates Subsection ~~[58-55-308]~~ 61-2e-308(2) or Subsection
4148 ~~[58-55-501]~~ 61-2e-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), or (15), or who fails to

4149 comply with a citation issued under this section after it is final, is guilty of a class A
4150 misdemeanor.

4151 (b) Any person who violates [~~the provisions of~~] Subsection [~~58-55-501~~] 61-2e-501(8)
4152 may not be awarded and may not accept a contract for the performance of the work.

4153 (2) Any person who violates [~~the provisions of~~] Subsection [~~58-55-501~~] 61-2e-501(13)
4154 is guilty of an infraction unless the violator did so with the intent to deprive the person to
4155 whom money is to be paid of the money received, in which case the violator is guilty of theft,
4156 as classified in Section 76-6-412.

4157 (3) Grounds for immediate suspension of the licensee's license by the division and the
4158 commission include:

4159 (a) the issuance of a citation for violation of Subsection [~~58-55-308~~] 61-2e-308(2) or
4160 Section [~~58-55-501~~] 61-2e-501; or

4161 (b) the failure by a licensee to make application to, report to, or notify the division with
4162 respect to any matter for which application, notification, or reporting is required under this
4163 chapter or rules adopted under this chapter, including:

4164 (i) applying to the division for a new license to engage in a new specialty classification
4165 or to do business under a new form of organization or business structure[;];

4166 (ii) filing with the division current financial statements[;]; or

4167 (iii) notifying the division concerning loss of insurance coverage, or change in
4168 qualifier.

4169 (4) (a) If upon inspection or investigation, the division concludes that a person has
4170 violated [~~the provisions of~~] Subsection [~~58-55-308~~] 61-2e-308(2) or Subsections [~~58-55-501~~]
4171 61-2e-501(1), (2), (3), (9), (10), (12), (14), (19), (21) or any rule or order issued with respect to
4172 these subsections, and that disciplinary action is appropriate, the director or the director's
4173 designee from within the division shall:

4174 (i) promptly issue a citation to the person according to this chapter and any pertinent
4175 rules[;];

4176 (ii) attempt to negotiate a stipulated settlement[;]; or

4177 (iii) notify the person to appear before an adjudicative proceeding conducted under
4178 Title 63, Chapter 46b, Administrative Procedures Act.

4179 [(i)] (b) Any person who is in violation [~~of the provisions~~] of Subsection [~~58-55-308~~]

4180 61-2e-308(2) or Subsection [~~58-55-501~~] 61-2e-501(1), (2), (3), (9), (10), (12), (14), (19), or
4181 (21) as evidenced by an uncontested citation, a stipulated settlement, or by a finding of
4182 violation in an adjudicative proceeding[;]:

4183 (i) may be assessed a fine pursuant to this Subsection (4); and

4184 (ii) may, in addition to or in lieu of the fine, be ordered to cease and desist from
4185 violating Subsection [~~58-55-308~~] 61-2e-308(2) or Subsection [~~58-55-501~~] 61-2e-501(1), (2),
4186 (3), (9), (10), (12), (14), (19), or (21).

4187 [(ii)] (c) Except for a cease and desist order, the licensure sanctions cited in Section
4188 [~~58-55-401~~] 61-2e-401 may not be assessed through a citation.

4189 [(iii)-(A)] (d) (i) A person who receives a citation or is fined for violating Subsection
4190 [~~58-55-501~~] 61-2e-501(21) may also be issued a cease and desist order from engaging in work
4191 to be performed by a contractor licensed under this chapter unless the person meets the
4192 continuing education requirement within 30 days after receipt of the citation or fine.

4193 [(B)] (ii) The order, if issued, shall be removed upon the person's completion of the
4194 continuing education requirement.

4195 [(C)] (iii) This Subsection [(4)(a)(iii)] (4)(d) is repealed effective July 1, 2010.

4196 [(b)] (e) Each citation shall:

4197 (i) be in writing [~~and~~];

4198 (ii) describe with particularity the nature of the violation, including a reference to the
4199 provision of the chapter, rule, or order alleged to have been violated[~~-. The citation shall~~];

4200 (iii) clearly state that the recipient must notify the division in writing within 20
4201 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
4202 conducted under Title 63, Chapter 46b, Administrative Procedures Act[~~-. The citation shall~~];
4203 and

4204 (iv) clearly explain the consequences of failure to timely contest the citation or to make
4205 payment of any fines assessed by the citation within the time specified in the citation.

4206 [(e)] (f) Each citation issued under this section, or a copy of each citation, may be
4207 served upon any person upon whom a summons may be served:

4208 (i) in accordance with the Utah Rules of Civil Procedure;

4209 (ii) personally or upon the person's agent by:

4210 (A) a division investigator; or [by]

4211 (B) any person specially designated by the director; or
 4212 (iii) by mail.

4213 ~~[(d)]~~ (g) If within 20 calendar days from the service of a citation, the person to whom
 4214 the citation ~~[was]~~ is issued fails to request a hearing to contest the citation, the citation becomes
 4215 the final order of the division and is not subject to further agency review. The period to contest
 4216 a citation may be extended by the division for cause.

4217 ~~[(e)]~~ (h) The division may refuse to issue or renew, suspend, revoke, or place on
 4218 probation the license of a licensee who fails to comply with a citation after it becomes final.

4219 ~~[(f)]~~ (i) The failure of an applicant for licensure to comply with a citation after it
 4220 becomes final is a ground for denial of license.

4221 ~~[(g) No]~~ (j) A citation may not be issued under this section after the expiration of six
 4222 months following the occurrence of any violation.

4223 ~~[(h)]~~ (k) Fines shall be assessed by the director or the director's designee according to
 4224 the following:

4225 (i) for a first offense handled pursuant to ~~[Subsection]~~ Subsections (4)(a) through (c), a
 4226 fine of up to \$1,000;

4227 (ii) for a second offense handled pursuant to ~~[Subsection]~~ Subsections (4)(a) through
 4228 (c), a fine of up to \$2,000; and

4229 (iii) for any subsequent offense handled pursuant to ~~[Subsection]~~ Subsections (4)(a)
 4230 through (c), a fine of up to \$2,000 for each day of continued offense.

4231 ~~[(i)]~~ (l) (i) For purposes of issuing a final order under this section and assessing a fine
 4232 under Subsection (4)~~[(i)]~~ (k), an offense constitutes a second or subsequent offense if:

4233 (A) the division previously issued a final order determining that a person committed a
 4234 first or second offense in violation of Subsection ~~[58-55-308]~~ 61-2e-308(2) or Subsection
 4235 ~~[58-55-501]~~ 61-2e-501(1), (2), (3), (9), (10), (12), (14), or (19); or

4236 (B) (I) the division initiated an action for a first or second offense;

4237 (II) no final order has been issued by the division in the action initiated under
 4238 Subsection (4)~~[(i)]~~ (l)(i)(B)(I);

4239 (III) the division determines during an investigation that occurred after the initiation of
 4240 the action under Subsection (4)~~[(i)]~~ (l)(i)(B)(I) that the person committed a second or
 4241 subsequent violation of ~~[the provisions of]~~ Subsection ~~[58-55-308]~~ 61-2e-308(2) or Subsection

4242 ~~[58-55-501]~~ 61-2e-501(1), (2), (3), (9), (10), (12), (14), or (19); and

4243 (IV) after determining that the person committed a second or subsequent offense under
4244 Subsection (4)~~[(†)]~~ (1)(i)(B)(III), the division issues a final order on the action initiated under
4245 Subsection (4) ~~[(†)]~~ (1)(B)(I).

4246 (ii) In issuing a final order for a second or subsequent offense under Subsection (4)~~[(†)]~~
4247 (1)(i), the division shall comply with the requirements of this section.

4248 (5) (a) ~~[Any penalty]~~ A fine imposed ~~[by the director]~~ under Subsection (4)~~[(†)]~~ (k)
4249 shall be deposited into the Commerce Service Fund.

4250 (b) Any penalty which is not paid may be collected by the director by ~~[either]~~:

4251 (i) referring the matter to a collection agency; or

4252 (ii) bringing an action in the district court:

4253 (A) of the county in which the person against whom the penalty is imposed resides; or

4254 (B) in the county where the office of the director is located.

4255 (c) Any county attorney or the attorney general of the state is to provide legal
4256 assistance and advice to the director in any action to collect the penalty.

4257 (d) In any action brought to enforce ~~[the provisions of]~~ this section, reasonable
4258 attorney's fees and costs shall be awarded.

4259 Section 62. Section **61-2e-504** is enacted to read:

4260 **61-2e-504. Maximum civil penalty for violation of court order.**

4261 (1) If any written order issued under this chapter or if an injunction or temporary
4262 restraining order issued by a court of competent jurisdiction relating to this chapter is violated,
4263 the court may impose a civil penalty of not more than \$2,000 for each day the written order,
4264 injunction, or temporary restraining order is violated, if the person in violation has received
4265 notice of the written order, injunction, or temporary restraining order.

4266 (2) All penalties ordered under this section shall be deposited into the General Fund.

4267 Section 63. Section **61-2e-505** is enacted to read:

4268 **61-2e-505. Court-ordered discipline.**

4269 The division shall promptly withhold, suspend, restrict, or reinstate the use of a license
4270 issued under this chapter if so ordered by a court.

4271 Section 64. Section **61-2e-601**, which is renumbered from Section 58-55-601 is
4272 renumbered and amended to read:

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Part 6. Payment Provisions

~~[58-55-601].~~ **61-2e-601. Payment -- Account designated.**

~~[When]~~ (1) A contractor shall designate the contract under which a payment is made or the items of account to which it is to be applied when making any payment to a materialman, supplier, contractor, or subcontractor;

(a) with whom ~~[he]~~ the contractor has a running account~~[-or];~~

(b) with whom ~~[he]~~ the contractor has more than one contract~~[-];~~ or

(c) to whom ~~[he]~~ the contractor is otherwise indebted~~[-the contractor shall designate the contract under which the payment is made or the items of account to which it is to be applied].~~

(2) When a payment for materials or labor is made to a subcontractor or materialman, the subcontractor or materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply.

(3) In cases where a lien is claimed for materials furnished or labor performed by a subcontractor or materialman, it is a defense to the claim that a payment was made by the owner to the contractor for the materials and was so designated and paid over to the subcontractor or materialman, if when the payment was received by the subcontractor or materialman, ~~[he]~~ the subcontractor or materialman did not demand a designation of the account and of the items of account to which the payment was to be applied.

Section 65. Section **61-2e-602**, which is renumbered from Section 58-55-602 is renumbered and amended to read:

~~[58-55-602].~~ **61-2e-602. Payment of construction funds -- Interest.**

(1) All unpaid construction funds are payable to the contractor as provided in Section 13-8-5.

(2) On projects involving multiple buildings, each building shall be considered individually in determining the amount to be paid the contractor.

(3) Partial occupancy of a building requires payment in direct proportion to the value of the part of the building occupied.

(4) If any payment is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section 66. Section **61-2e-603**, which is renumbered from Section 58-55-603 is

4304 renumbered and amended to read:

4305 ~~[58-55-603].~~ 61-2e-603. Payment to subcontractors and suppliers.

4306 (1) When a contractor receives any construction funds from an owner or another
4307 contractor for work performed and billed, ~~[he]~~ the contractor shall pay each of ~~[his]~~ the
4308 contractor's subcontractors and suppliers in proportion to the percentage of the work they
4309 performed under that billing, unless otherwise agreed by contract. ~~[(2) If;]~~

4310 (2) (a) If the conditions of Subsection (2)(b) are met, a contractor shall pay to a
4311 subcontractor or supplier, in addition to the payment:

4312 (i) interest in the amount of 1% per month of the amount due, beginning on the day
4313 after payment is due; and

4314 (ii) reasonable costs of any collection and attorney's fees.

4315 (b) Subsection (2)(a) applies if, under this section and without reasonable cause, or
4316 unless otherwise agreed by contract, the contractor fails to pay for work performed by ~~[his]~~ the
4317 contractor's subcontractors or suppliers within the later of:

4318 (i) 30 consecutive days after receiving construction funds for work performed and
4319 billed from:

4320 (A) the owner; or

4321 (B) another contractor [for work performed and billed,]; or [after]

4322 (ii) the last day payment is due under the terms of the billing[; whichever is later, he
4323 shall pay to the subcontractor or supplier, in addition to the payment, interest in the amount of
4324 1% per month of the amount due, beginning on the day after payment is due, and reasonable
4325 costs of any collection and attorney's fees].

4326 (3) When a subcontractor receives any construction payment under this section,
4327 Subsections (1) and (2) apply to that subcontractor.

4328 Section 67. Section **61-2e-604**, which is renumbered from Section 58-55-604 is
4329 renumbered and amended to read:

4330 ~~[58-55-604].~~ 61-2e-604. Proof of licensure to maintain or commence
4331 action.

4332 ~~[No]~~ A contractor may not act as agent or commence or maintain any action in any
4333 court of the state for collection of compensation for performing any act for which a license is
4334 required by this chapter without alleging and proving that ~~[he]~~ the contractor was a properly

4335 licensed contractor;

4336 (1) when the contract sued upon was entered into[;]; and

4337 (2) when the alleged cause of action arose.

4338 Section 68. Section **61-2f-101**, which is renumbered from Section 58-56-1 is

4339 renumbered and amended to read:

4340 **CHAPTER 2f. UTAH UNIFORM BUILDING STANDARDS ACT**

4341 **Part 1. General Provisions**

4342 **[58-56-1]. 61-2f-101. Title.**

4343 This chapter is known as the "Utah Uniform Building Standards Act."

4344 Section 69. Section **61-2f-102**, which is renumbered from Section 58-56-2 is

4345 renumbered and amended to read:

4346 **[58-56-2]. 61-2f-102. Chapter administration.**

4347 [The provisions of this] This chapter shall be administered by the Division of

4348 [~~Occupational and Professional Licensing~~] Real Estate.

4349 Section 70. Section **61-2f-103**, which is renumbered from Section 58-56-3 is

4350 renumbered and amended to read:

4351 **[58-56-3]. 61-2f-103. Definitions.**

4352 [~~In addition to the definitions in Section 58-1-102, as] As used in this chapter:~~

4353 (1) "Building" means a structure used or intended for supporting or sheltering any use
4354 or occupancy and any improvements attached to it.

4355 (2) "Code(s)" means the following codes, including the standards and specifications
4356 contained in them:

4357 (a) codes adopted by the commission under Subsection [~~58-56-4~~] 61-2f-201(2); and

4358 (b) codes approved by the commission under Subsection [~~58-56-4~~] 61-2f-201(4)(a).

4359 (3) "Commission" means the Uniform Building Code Commission created under this
4360 chapter.

4361 (4) "Compliance agency" means:

4362 (a) an agency of the state or any of its political subdivisions which issues permits for
4363 construction regulated under the codes[;]; or

4364 (b) any other agency of the state or its political subdivisions specifically empowered to
4365 enforce compliance with the codes.

- 4366 (5) "Division" means the Division of Real Estate.
- 4367 [~~(5)~~] (6) "Factory built housing" means manufactured homes or mobile homes.
- 4368 [~~(6)~~] (7) (a) "Factory built housing set-up contractor" means an individual licensed by
- 4369 the division to set up or install factory built housing on a temporary or permanent basis.
- 4370 (i) The scope of the work included under the license includes:
- 4371 (A) the placement and or securing of the factory built housing on a permanent or
- 4372 temporary foundation[;];
- 4373 (B) securing the units together if required[;]; and
- 4374 (C) connection of the utilities to the factory built housing unit[~~;~~but].
- 4375 (ii) The scope of the work included under the license does not include:
- 4376 (A) site preparation[;];
- 4377 (B) construction of a permanent foundation[;]; and
- 4378 (C) construction of utility services to the near proximity of the factory built housing
- 4379 unit.
- 4380 (b) If a dealer is not licensed as a factory built housing set up contractor, that individual
- 4381 must subcontract the connection services to individuals who are licensed by the division to
- 4382 perform those specific functions under Title [58] 61, Chapter [55] 2e, Utah Construction
- 4383 Trades Licensing Act.
- 4384 [~~(7)~~] (8) "HUD code" means the National Manufactured Housing Construction and
- 4385 Safety Standards Act, 42 U.S.C. Sec. 5401 et seq.
- 4386 [~~(8)~~] (9) "Local regulator" means each political subdivision of the state [~~which~~] that is
- 4387 empowered to engage in the regulation of construction, alteration, remodeling, building, repair,
- 4388 and other activities subject to the codes.
- 4389 [~~(9)~~] (10) (a) "Manufactured home" means a transportable factory built housing unit:
- 4390 (i) constructed:
- 4391 (A) on or after June 15, 1976[;];
- 4392 (B) according to the HUD Code[;]; and
- 4393 (C) in one or more sections[;];
- 4394 (ii) (A) which, in the traveling mode, is eight body feet or more in width or 40 body
- 4395 feet or more in length[;]; or
- 4396 (B) when erected on site, is 400 or more square feet[;]; and

4397 (iii) which is built on a permanent chassis and designed to be used as a dwelling with
4398 or without a permanent foundation when connected to the required utilities, and includes the
4399 plumbing, heating, air-conditioning, and electrical systems.

4400 (b) Manufactured homes constructed on or after June 15, 1976, shall be identifiable by
4401 the manufacturer's data plate bearing the date the unit was manufactured and a HUD label
4402 attached to the exterior of the home certifying the home was manufactured to HUD standards.

4403 ~~[(10)]~~ (11) "Mobile home" means a transportable factory built housing unit built prior
4404 to June 15, 1976, in accordance with a state mobile home code which existed prior to the HUD
4405 Code.

4406 ~~[(11)]~~ (12) "Modular unit" means a structure built from sections ~~[which]~~ that are
4407 manufactured in accordance with the construction standards adopted pursuant to Section
4408 ~~[58-56-4]~~ 61-2f-201 and transported to a building site, the purpose of which is for human
4409 habitation, occupancy, or use.

4410 ~~[(12)]~~ (13) "Opinion" means a written, nonbinding, and advisory statement issued by
4411 the commission concerning an interpretation of the meaning of the codes or the application of
4412 the codes in a specific circumstance issued in response to a specific request by a party to the
4413 issue.

4414 ~~[(13)]~~ (14) "State regulator" means an agency of the state ~~[which]~~ that is empowered to
4415 engage in the regulation of construction, alteration, remodeling, building, repair, and other
4416 activities subject to the codes adopted pursuant to this chapter.

4417 ~~[(14)]~~ (15) "Unlawful conduct" is as defined in ~~[Subsection 58-1-501(1)]~~ Subsections
4418 61-2e-501(22) through (25) and includes:

4419 (a) engaging in the sale of factory built housing without being registered with the
4420 division as a dealer, unless the sale is exempt under Section ~~[58-56-16]~~ 61-2f-210; and

4421 (b) selling factory built housing within the state as a dealer without collecting and
4422 remitting to the division the fee required by Section ~~[58-56-17]~~ 61-2f-211.

4423 ~~[(15)]~~ (16) "Unprofessional conduct" is as defined in ~~[Subsection 58-1-501(2)]~~ Section
4424 61-2e-502 and includes:

4425 (a) any nondelivery of goods or services by a registered dealer which constitutes a
4426 breach of contract by the dealer;

4427 (b) the failure of a registered dealer to pay a subcontractor or supplier any amounts to

4428 which that subcontractor or supplier is legally entitled; and

4429 (c) any other activity which is defined as unprofessional conduct by division rule in
4430 accordance with [~~the provisions of~~] Title 63, Chapter 46a, Utah Administrative Rulemaking
4431 Act.

4432 Section 71. Section **61-2f-104**, which is renumbered from Section 58-56-5 is
4433 renumbered and amended to read:

4434 ~~[58-56-5].~~ **61-2f-104. Building Code Commission.**

4435 (1) There is established a Uniform Building Code Commission to advise the division
4436 with respect to the division's responsibilities in administering the codes under this chapter.

4437 (2) The commission shall be appointed by the executive director who shall submit [~~his~~]
4438 the executive director's nominations to the governor for confirmation or rejection. If a nominee
4439 is rejected, alternative names shall be submitted until confirmation is received. Following
4440 confirmation by the governor, the appointment shall be made.

4441 (3) The commission shall consist of eleven members who shall be appointed in
4442 accordance with the following:

4443 (a) one member shall be from among candidates nominated by the Utah League of
4444 Cities and Towns and the Utah Association of Counties;

4445 (b) one member shall be a licensed building inspector employed by a political
4446 subdivision of the state;

4447 (c) one member shall be a licensed professional engineer;

4448 (d) one member shall be a licensed architect;

4449 (e) one member shall be a fire official;

4450 (f) three members shall be contractors licensed by the state, of which one shall be a
4451 general contractor, one an electrical contractor, and one a plumbing contractor;

4452 (g) two members shall be from the general public and have no affiliation with the
4453 construction industry or real estate development industry; and

4454 (h) one member shall be from the Division of Facilities Construction Management,
4455 Department of Administrative Services.

4456 (4) (a) Except as required by Subsection (4)(b), as terms of current commission
4457 members expire, the executive director shall appoint each new member or reappointed member
4458 to a four-year term.

4459 (b) Notwithstanding the requirements of Subsection (4)(a), the executive director shall,
4460 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
4461 of commission members are staggered so that approximately half of the commission is
4462 appointed every two years.

4463 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
4464 appointed for the unexpired term.

4465 (6) ~~[No]~~ A commission member may not serve more than two full terms, and no
4466 commission member who ceases to serve may again serve on the commission until after the
4467 expiration of two years from the date of cessation of service.

4468 (7) A majority of the commission members shall constitute a quorum and may act on
4469 behalf of the commission.

4470 (8) (a) (i) ~~[Members]~~ A member who ~~[are]~~ is not a government ~~[employees]~~ employee
4471 shall receive no compensation or benefits for ~~[their]~~ the member's services, but may receive per
4472 diem and expenses incurred in the performance of the member's official duties at the rates
4473 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4474 (ii) ~~[Members]~~ A member may decline to receive per diem and expenses for ~~[their]~~ the
4475 member's service.

4476 (b) (i) ~~[State]~~ A state government officer and employee ~~[members]~~ member who ~~[do]~~
4477 does not receive salary, per diem, or expenses from ~~[their]~~ the member's agency for ~~[their]~~ the
4478 member's service may receive per diem and expenses incurred in the performance of ~~[their]~~ the
4479 member's official duties from the commission at the rates established by the Division of
4480 Finance under Sections 63A-3-106 and 63A-3-107.

4481 (ii) ~~[State]~~ A state government officer and employee members may decline to receive
4482 per diem and expenses for ~~[their]~~ the member's service.

4483 (c) (i) ~~[Local]~~ A local government ~~[members]~~ member who ~~[do]~~ does not receive
4484 salary, per diem, or expenses from the entity that ~~[they represent for their]~~ the member
4485 represents for the member's service may receive per diem and expenses incurred in the
4486 performance of ~~[their]~~ the member's official duties at the rates established by the Division of
4487 Finance under Sections 63A-3-106 and 63A-3-107.

4488 (ii) ~~[Local]~~ A local government ~~[members]~~ member may decline to receive per diem
4489 and expenses for ~~[their]~~ the member's service.

4490 (9) (a) The commission shall annually designate one of its members to serve as chair of
4491 the commission.

4492 (b) The division shall provide a secretary to facilitate the function of the commission
4493 and to record its actions and recommendations.

4494 (10) The duties and responsibilities of the commission are to:

4495 (a) recommend to the director the:

4496 (i) adoption by rule of codes and amendments under Subsections [~~58-56-4~~]
4497 61-2f-201(2)(b) and (c); and

4498 (ii) approval by rule of the codes referenced in Subsection [~~58-56-4~~] 61-2f-201(4)(a);

4499 (b) offer an opinion regarding the interpretation of or the application of any of the
4500 codes adopted or approved under Section [~~58-56-4~~] 61-2f-201 upon a formal submission by a
4501 party to the matter in question which submission must clearly state:

4502 (i) the facts in question[;];

4503 (ii) the specific code citation involved; and

4504 (iii) the position taken by all parties;

4505 (c) act as an appeals board as provided in Subsection [~~58-56-8~~] 61-2f-204(3);

4506 (d) establish advisory peer committees on either a standing or ad hoc basis to advise
4507 the commission with respect to matters related to the codes described in Section [~~58-56-4~~]
4508 61-2f-201, including a committee to advise the commission regarding health matters related to
4509 the plumbing code; and

4510 (e) assist the division in overseeing code-related training in accordance with Section
4511 [~~58-56-9~~] 61-2f-302.

4512 Section 72. Section **61-2f-201**, which is renumbered from Section 58-56-4 is
4513 renumbered and amended to read:

4514 **Part 2. Building Codes and Standards**

4515 [~~58-56-4~~]. **61-2f-201. Definitions -- Adoption of building codes -- Amendments**
4516 **-- Approval of other codes -- Exemptions.**

4517 (1) As used in this section:

4518 (a) "agricultural use" means a use that relates to the tilling of soil and raising of crops,
4519 or keeping or raising domestic animals;

4520 (b) "not for human occupancy" means use of a structure for purposes other than

4521 protection or comfort of human beings, but allows people to enter the structure for:
4522 (i) maintenance and repair; and
4523 (ii) the care of livestock, crops, or equipment intended for agricultural use which are
4524 kept there; and
4525 (c) "residential area" means land that is not used for an agricultural use and is:
4526 (i) (A) within the boundaries of a city or town; and
4527 (B) less than five contiguous acres;
4528 (ii) (A) within a subdivision for which the county has approved a subdivision plat
4529 under Title 17, Chapter 27, Part 8, Subdivisions; and
4530 (B) less than two contiguous acres; or
4531 (iii) not located in whole or in part in an agricultural protection area created under Title
4532 17, Chapter 41, Agriculture Protection Area.
4533 (2) (a) Subject to ~~[the provisions of]~~ Subsections (4) and (5), the following codes, each
4534 of which must be promulgated by a nationally recognized code authority, shall be adopted, in
4535 the manner described in Subsection (2)(b), as the construction codes ~~[which]~~ that the state and
4536 each political subdivision of the state shall follow in the circumstances described in Subsection
4537 (3):
4538 (i) a building code;
4539 (ii) the National Electrical Code promulgated by the National Fire Protection
4540 Association;
4541 (iii) a residential one and two family dwelling code;
4542 (iv) a plumbing code;
4543 (v) a mechanical code;
4544 (vi) a fuel gas code;
4545 (vii) an energy conservation code; and
4546 (viii) a manufactured housing installation standard code.
4547 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
4548 division, in collaboration with the commission, shall adopt by rule specific editions of the
4549 codes described in Subsection (2)(a), and may adopt by rule successor editions of any adopted
4550 code.
4551 (c) The division, in collaboration with the commission, may, in accordance with

4552 Section ~~[58-56-7]~~ 61-2f-203, adopt amendments to the codes adopted under Subsection (2)(a),
4553 to be applicable to the entire state or within one or more political subdivisions.

4554 (3) Subject to ~~[the provisions of]~~ Subsections (4) and (5), the codes and amendments
4555 adopted under Subsection (2) shall be followed when:

4556 (a) new construction is involved; or

4557 (b) the owner of an existing building, or the owner's agent, is voluntarily engaged in:

4558 (i) the repair, renovation, remodeling, alteration, enlargement, rehabilitation,
4559 conservation, or reconstruction of the building; or

4560 (ii) changing the character or use of the building in a manner which increases the
4561 occupancy loads, other demands, or safety risks of the building.

4562 (4) (a) The division, in collaboration with the commission, has discretion to approve,
4563 without adopting, certain codes in addition to those described in Subsection (2)(a), including
4564 specific editions of the codes, for use by a compliance agency.

4565 (b) If the applicable code is one which the division has approved under Subsection
4566 (4)(a), a compliance agency has the discretion to:

4567 (i) adopt an ordinance requiring removal, demolition, or repair of a building, according
4568 to a code;

4569 (ii) adopt, by ordinance or rule, a dangerous building code; or

4570 (iii) adopt, by ordinance or rule, a building rehabilitation code.

4571 (5) (a) Except in a residential area, a structure used solely in conjunction with
4572 agriculture use, and not for human occupancy, is exempted from the permit requirements of
4573 any code adopted by the division.

4574 (b) Notwithstanding Subsection (5)(a), unless otherwise exempted, plumbing,
4575 electrical, and mechanical permits may be required when that work is included in the structure.

4576 Section 73. Section **61-2f-202**, which is renumbered from Section 58-56-6 is
4577 renumbered and amended to read:

4578 ~~[58-56-6].~~ **61-2f-202. Building codes -- Division duties and responsibilities.**

4579 (1) The division shall administer the codes adopted or approved under Section
4580 ~~[58-56-4]~~ 61-2f-201 pursuant to this chapter, but shall have no responsibility or duty to conduct
4581 inspections to determine compliance with the codes, issue permits, or assess building permit
4582 fees.

4583 (2) Administration of the codes adopted or approved under Section [~~58-56-4~~]
4584 61-2f-201 by the division shall include:

4585 (a) receiving recommendations from the commission and thereafter adopting by rule
4586 the editions of the codes and amendments to the codes under Subsections [~~58-56-4~~]

4587 61-2f-201(2)(b) and (c);

4588 (b) receiving recommendations from the commission and thereafter approving by rule
4589 the code editions referenced in Subsection [~~58-56-4~~] 61-2f-201(4)(a);

4590 (c) maintaining and publishing for reference on a current basis the adopted
4591 amendments to the codes under Subsection [~~58-56-4~~] 61-2f-201(2)(c); and

4592 (d) receiving requests for amendments and opinions from the commission, scheduling
4593 appropriate hearings and publishing the amendments to the codes and the opinions of the
4594 commission with respect to interpretation and application of the codes.

4595 Section 74. Section **61-2f-203**, which is renumbered from Section 58-56-7 is
4596 renumbered and amended to read:

4597 [~~58-56-7~~]. **61-2f-203. Code amendments -- Commission recommendations --**
4598 **Division duties and responsibilities.**

4599 (1) The division, with the commission, shall establish by rule the procedure and
4600 manner under which requests for amendments to codes under Subsection [~~58-56-4~~]
4601 61-2f-201(2)(c) shall be:

4602 (a) filed with the division; and

4603 (b) recommended or declined for adoption.

4604 (2) The division shall accept from any local regulators, state regulators, state agencies
4605 involved with the construction and design of buildings, the contractors, plumbers, or
4606 electricians licensing boards, or from recognized construction-related associations a request for
4607 amendment to the codes under Subsection [~~58-56-4~~] 61-2f-201(2)(c).

4608 (3) The division may make recommendations to the commission for amendments to
4609 codes under Subsection [~~58-56-4~~] 61-2f-201(2)(c). The commission may also consider
4610 amendments on its own initiative.

4611 (4) On May 15 and November 15 of each calendar year, or the first government
4612 working day thereafter if either date falls on a weekend or government holiday, the division
4613 shall convene a public hearing, as a part of the rulemaking process, before the commission

4614 concerning requests for amendment of the codes, recommended by the division and
4615 commission to be adopted by rule. The hearing shall be conducted in accordance with the rules
4616 of the commission.

4617 (5) Within 15 days following completion of the hearing under Subsection (4), the
4618 commission shall provide to the division a written recommendation concerning each
4619 amendment.

4620 (6) The division shall consider the recommendations and promulgate amendments by
4621 rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act and as
4622 prescribed by the director.

4623 (7) The decision of the division to accept or reject the recommendation of the
4624 commission shall be made within 15 days after receipt of the recommendation.

4625 (8) All decisions of the division pertaining to adoption of a code edition or
4626 amendments to any code, which are contrary to recommendations of the commission, may be
4627 overridden by a two-thirds vote of the commission according to a procedure to be established
4628 by rule.

4629 (9) (a) Amendments with statewide application:

4630 (i) shall be effective on the January 1 or July 1 following the public hearing or as soon
4631 after that date as the requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking
4632 Act, are met; or

4633 (ii) may be effective prior to the dates in Subsection (9)(a)(i) if designated by the
4634 division and the commission as necessary for the public health, safety, and welfare.

4635 (b) Amendments with local application only shall be effective on a date to be
4636 determined by the division and the commission.

4637 (c) In making rules required by this chapter, the division shall comply with the
4638 provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The provisions of
4639 that chapter shall have control over this section in case of any conflict.

4640 Section 75. Section **61-2f-204**, which is renumbered from Section 58-56-8 is
4641 renumbered and amended to read:

4642 **[58-56-8]. 61-2f-204. Compliance with codes -- Responsibility for inspections**
4643 **-- Appeals.**

4644 (1) The responsibility for inspection of construction projects and enforcement of

4645 compliance with provisions of the codes shall be with the compliance agency having
4646 jurisdiction over the project and the applicable codes.

4647 (2) A finding by a compliance agency that a licensed contractor, electrician, or plumber
4648 has materially violated the provisions of a code in a manner to jeopardize the public health,
4649 safety, and welfare and failed to comply with corrective orders of the compliance agency shall
4650 be furnished in writing to the division by the compliance agency. It is the responsibility of the
4651 compliance agency to conduct a primary investigation to determine that, in fact, there has been
4652 a material violation of the provisions of the code jeopardizing the public interest and provide
4653 the report of investigation to the division.

4654 (3) (a) Each compliance agency shall establish a method of appeal by which a person
4655 disputing the application and interpretation of a code may appeal and receive a timely review of
4656 the disputed issues in accordance with the codes adopted or approved under Section ~~[58-56-4]~~
4657 61-2f-201.

4658 (b) If a compliance agency refuses to establish a method of appeal, the commission
4659 shall act as the appeals board and conduct a hearing within 45 days.

4660 (c) The findings of the commission shall be binding.

4661 (d) An appeals board established under this section shall have no authority to:

4662 (i) interpret the administrative provisions of the codes ~~[nor shall the appeals board be~~
4663 ~~empowered to]; or~~

4664 (ii) waive requirements of the codes.

4665 Section 76. Section **61-2f-205**, which is renumbered from Section 58-56-11 is
4666 renumbered and amended to read:

4667 ~~[58-56-11].~~ **61-2f-205. Standards for specialized buildings.**

4668 (1) (a) This chapter ~~[shall]~~ may not be implied to repeal or otherwise affect authorities;

4669 (i) granted to a state agency to make or administer standards for specialized buildings,
4670 as provided in:

4671 (A) Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act~~[-];~~

4672 (B) Title 26, Chapter 39, Utah Child Care Licensing Act~~[-];~~

4673 (C) Title 62A, Chapter 2, Licensure of Programs and Facilities~~[-];~~ and

4674 (D) Title 64, Chapter 13, Department of Corrections - State Prison~~[-];~~ or ~~[authorities]~~

4675 (ii) granted to a state agency by statute to make or administer ~~[other]~~ special standards

4676 other than the standards listed in Subsection (1)(a)(i).

4677 (b) In the event of a conflict between [~~such~~] the special standards described in
4678 Subsection (1)(a) and codes adopted pursuant to this chapter, the special standards shall
4679 prevail.

4680 (2) The provisions of this chapter do not apply to the administration of the statutes
4681 described in Subsection (1).

4682 Section 77. Section ~~61-2f-206~~, which is renumbered from Section 58-56-12 is
4683 renumbered and amended to read:

4684 ~~[58-56-12].~~ **61-2f-206. Factory built housing units.**

4685 (1) (a) Manufactured homes constructed, sold, or set-up in the state shall be
4686 constructed in accordance with the HUD code.

4687 (b) Manufactured homes set-up in the state shall be installed in accordance with the
4688 manufactured housing installation standard code referred to in Section ~~[58-56-4]~~ 61-2f-201.

4689 (c) The authority and responsibility for the issuance of building permits for the
4690 modification or set-up of manufactured homes within a political subdivision of the state shall
4691 be with the local regulator within that political subdivision.

4692 (d) The inspection of modifications to or the set-up of manufactured homes shall be
4693 conducted and approvals given by the local regulator within the political subdivision in which
4694 the set-up takes place.

4695 (2) (a) ~~[Mobile homes]~~ A mobile home sold or set-up in the state shall be constructed
4696 in accordance with the mobile home construction code in existence in the state in which the
4697 mobile home was constructed at the time the mobile home was constructed.

4698 (b) Mobile homes set-up in the state shall be installed in accordance with the
4699 manufactured housing installation standard code referred to in Section ~~[58-56-4]~~ 61-2f-201.

4700 (c) The authority and responsibility for the issuance of building permits for the
4701 modification of or set-up of mobile homes within a political subdivision of the state shall be
4702 with the local regulator within that political subdivision.

4703 (d) The inspection of modification to or the set-up of mobile homes shall be conducted
4704 and approvals given by the local regulator within the political subdivision in which the set-up
4705 takes place.

4706 Section 78. Section ~~61-2f-207~~, which is renumbered from Section 58-56-13 is

4707 renumbered and amended to read:

4708 ~~[58-56-13]~~. **61-2f-207. Modular units.**

4709 Modular unit construction, set-up, issuance of permits for construction or set-up, and
4710 set-up shall be in accordance with the following:

4711 (1) construction and set-up shall be in accordance with the building standards adopted
4712 pursuant to Section ~~[58-56-4]~~ 61-2f-201, or equivalent standards adopted by rule;

4713 (2) the responsibility and authority for plan review and issuance of permits for
4714 construction, modification, or set-up shall be that of the local regulator of the political
4715 subdivision in which the modular unit is to be set-up;

4716 (3) the inspection of the construction, modification of, or set-up of a modular unit to
4717 determine conformance with the provisions of this chapter and the issuance of approvals shall
4718 be the responsibility of the local regulator in the political subdivision in which the modular unit
4719 is to be set-up or is set-up; and

4720 (4) nothing in this section shall preclude a local regulator from contracting with a
4721 qualified third party for the inspection or plan review provided in this section, or the state from
4722 entering into an interstate compact for third party inspection of the construction of modular
4723 units.

4724 Section 79. Section **61-2f-208**, which is renumbered from Section 58-56-14 is
4725 renumbered and amended to read:

4726 ~~[58-56-14]~~. **61-2f-208. Modification of factory built housing units and modular
4727 units.**

4728 (1) Any modification to factory built housing units shall be made in accordance with
4729 ~~[the following:]~~ this section.

4730 (a) Prior to set-up, modification to a manufactured home or mobile home prior to
4731 installation or set-up of the unit for habitation shall be made in accordance with the HUD code.

4732 (b) After set-up:

4733 (i) modification to a manufactured home or mobile home after installation or set-up of
4734 the unit for habitation, which modification does not include the addition of any space to the
4735 existing unit or the attachment of any structure to the existing unit shall be made in accordance
4736 with the HUD code; and

4737 (ii) modification to a manufactured home or mobile home after installation or set-up of

4738 the unit for habitation, which modification includes the addition of any space to the existing
4739 unit or the attachment of any structure to the unit shall be made as follows:

4740 (A) modifications to the existing unit shall be in accordance with the HUD code; and

4741 (B) additional structure outside of the existing unit shall be in accordance with the

4742 Utah Uniform Building Standards Act.

4743 (2) Any modification to modular housing units shall be made in accordance with the

4744 Utah Uniform Building Standards Act.

4745 Section 80. Section **61-2f-209**, which is renumbered from Section 58-56-15 is

4746 renumbered and amended to read:

4747 ~~[58-56-15]~~. **61-2f-209. Factory built housing and modular units -- Division**

4748 **responsibility -- Unlawful conduct.**

4749 (1) The division:

4750 (a) shall maintain current information on the HUD code and the manufactured housing

4751 installation standard code referred to in Section ~~[58-56-4]~~ 61-2f-201 and will provide at

4752 reasonable cost the information to compliance agencies, local regulators, or state regulators

4753 requesting such information;

4754 (b) shall provide qualified personnel to advise compliance agencies, local regulators,

4755 and state regulators regarding the standards for construction and set-up, construction and set-up

4756 inspection, and additions or modifications to factory built housing;

4757 (c) is designated as the state administrative agency for purposes under ~~[the provisions~~

4758 ~~of]~~ the HUD code;

4759 (d) may:

4760 (i) inspect the work of modular unit manufacturers in the state during the construction

4761 process to determine compliance of the manufacturer with the Utah Uniform Building Standard

4762 Act for those units to be installed within the state; and

4763 (ii) upon a finding of substantive deficiency, issue a corrective order to the

4764 manufacturer with a copy to the local regulator in the state's political subdivision in which the

4765 unit is to be installed;

4766 (e) shall have rights of entry and inspection as specified under the HUD Code; and

4767 (f) shall implement by rule as required by the HUD Code:

4768 (i) a dispute resolution program; and

4769 (ii) a continuing education requirement for manufactured housing installation
4770 contractors.

4771 (2) The division may assess civil penalties payable to the state for violation of the
4772 HUD Code in an amount identical to those set forth in Section 611 of the National
4773 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Sec. 5410.

4774 (3) The state may impose criminal sanctions for violations of the HUD Code identical
4775 to those set forth in Section 611 of the National Manufactured Housing Construction and
4776 Safety Standards Act of 1974, 42 U.S.C. Sec. 5410, provided that if the criminal sanction is a
4777 fine, the fine shall be payable to the state.

4778 Section 81. Section **61-2f-210**, which is renumbered from Section 58-56-16 is
4779 renumbered and amended to read:

4780 **~~[58-56-16].~~ 61-2f-210. Registration of dealers -- Bonding requirements --**
4781 **Renewal -- Exemptions -- Discipline.**

4782 (1) Each person engaged in the sale of factory built housing in the state, except as
4783 provided in Subsection (4), shall register with the division as a dealer.

4784 (2) Each applicant for registration under this section shall:

4785 (a) submit an application in a form prescribed by the division;

4786 (b) pay a fee determined by the department under Section 63-38-3.2; and

4787 (c) provide the division with a registration bond in accordance with rules established
4788 by the division.

4789 (3) (a) The division shall issue each registration under this section in accordance with a
4790 two-year renewal cycle established by rule.

4791 (b) The division may by rule extend or shorten a renewal cycle by as much as one year
4792 to stagger the renewal cycles it administers.

4793 (c) Each registration under this section automatically expires on the expiration date on
4794 the certificate of registration unless the registrant renews it in accordance with Section
4795 58-1-308.

4796 (4) Subsection (1) does not apply to:

4797 (a) a person not regularly engaged in the sale of factory built housing who is selling a
4798 unit ~~[he]~~ the person owns for ~~[his]~~ the person's own account;

4799 (b) a principal broker licensed under Title 61, Chapter 2, Division of Real Estate; or

4800 (c) a sales agent or associate broker licensed under Title 61, Chapter 2, Division of
4801 Real Estate, who sells factory built housing as an agent for, and under the supervision, of the
4802 licensed principal broker with whom he is affiliated.

4803 (5) Grounds for refusing to issue a registration, for refusing to renew a registration, for
4804 revoking, suspending, restricting, or placing on probation a registration, for issuing a public or
4805 private reprimand to a registrant, and for issuing a cease and desist order shall be in accordance
4806 with Section ~~[58-1-401]~~ 61-2e-401 except that the reference in Section 61-2e-401 to licensure
4807 shall be changed to registration under this section.

4808 Section 82. Section **61-2f-211**, which is renumbered from Section 58-56-17 is
4809 renumbered and amended to read:

4810 ~~[58-56-17].~~ **61-2f-211. Fees on sale -- Escrow agents -- Sales tax.**

4811 (1) (a) Each dealer shall collect and remit a fee of \$75 to the division for each factory
4812 built home the dealer sells that has not, as of the date of the sale, been permanently affixed to
4813 real property and converted to real property as provided in Section 70D-1-20.

4814 (b) The fee described in Subsection (1)(a) shall be:

4815 (i) payable within 30 days following the close of each calendar quarter for all units sold
4816 during that calendar quarter~~[- The fee shall be]; and~~

4817 (ii) deposited in a restricted account as provided in Section ~~[58-56-17.5]~~ 61-2f-212.

4818 (2) Any principal real estate broker, associate broker, or sales agent exempt from
4819 registration as a dealer under Section ~~[58-56-16]~~ 61-2f-210 who sells a factory built home that
4820 has not been permanently affixed to real property shall close the sale only through a qualified
4821 escrow agent in this state registered with:

4822 (a) the Insurance Department; or

4823 (b) the Department of Financial Institutions.

4824 (3) Each escrow agent through which a sale is closed under Subsection (2) shall remit
4825 all required sales tax to the state.

4826 Section 83. Section **61-2f-212**, which is renumbered from Section 58-56-17.5 is
4827 renumbered and amended to read:

4828 ~~[58-56-17.5].~~ **61-2f-212. Factory Built Housing Fees Restricted Account.**

4829 (1) There is created within the General Fund a restricted account known as "Factory
4830 Built Housing Fees Account."

4831 (2) (a) The restricted account shall be funded from the fees the dealer collects and
4832 remits to the division for each factory built home the dealer sells as provided in Subsection
4833 ~~[58-56-17]~~ 61-2f-211(1).

4834 (b) The division shall deposit all monies collected under Subsection ~~[58-56-17]~~
4835 61-2f-211(1) in the restricted account.

4836 (c) The restricted account shall be used to pay for education and enforcement of the
4837 Utah Uniform Building Standards Act, including:

4838 (i) investigations and administrative actions; and

4839 (ii) the funding of additional employees to the amount of the legislative appropriation.

4840 (d) The restricted account may accrue interest which shall be deposited into the
4841 restricted account.

4842 Section 84. Section **61-2f-301**, which is renumbered from Section 58-56-8.5 is
4843 renumbered and amended to read:

4844 **Part 3. Licensing of Inspectors**

4845 ~~[58-56-8.5]~~. **61-2f-301. Building Inspector Licensing Board.**

4846 (1) There is created a Building Inspector Licensing Board consisting of four building
4847 inspectors and one member of the general public.

4848 (2) The board shall be appointed and serve ~~[in accordance with Section 58-1-201]~~ as
4849 provided in this Subsection (2).

4850 (a) The executive director shall appoint the members of the board. In appointing these
4851 members, the executive director shall give consideration to recommendations by members of
4852 the respective occupations and professions and by their organizations.

4853 (b) The names of all persons appointed to the board shall be submitted to the governor
4854 for confirmation or rejection. If an appointee is rejected by the governor, the executive director
4855 shall appoint another person in the same manner as set forth in Subsection (2)(a).

4856 (c) (i) Except as required by Subsection (2)(c)(ii), as terms of current board members
4857 expire, the executive director shall appoint each new member or reappointed member to a
4858 four-year term.

4859 (ii) Notwithstanding the requirements of Subsection (2)(c)(i), the executive director
4860 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the
4861 terms of board members are staggered so that approximately half of the board is appointed

4862 every two years.

4863 (d) A board member may not serve more than two consecutive terms, and a board
4864 member who ceases to serve on a board may not serve again on that board until after the
4865 expiration of a two-year period beginning from that cessation of service.

4866 (e) (i) When a vacancy occurs in the membership for any reason, the replacement shall
4867 be appointed for the unexpired term.

4868 (ii) After filling that term, the replacement member may be appointed for only one
4869 additional full term.

4870 (f) If a board member fails or refuses to fulfill the responsibilities and duties of a board
4871 member, including the attendance at board meetings, the executive director with the approval
4872 of the board may remove the board member and replace the member in accordance with this
4873 section.

4874 (g) A majority of the board members constitutes a quorum. A quorum is sufficient
4875 authority for the board to act.

4876 (h) (i) (A) A member who is not a government employee shall receive no
4877 compensation or benefits for the member's services, but may receive per diem and expenses
4878 incurred in the performance of the member's official duties at the rates established by the
4879 Division of Finance under Sections 63A-3-106 and 63A-3-107.

4880 (B) A member may decline to receive per diem and expenses for the member's service.

4881 (ii) (A) A state government officer and employee member who does not receive salary,
4882 per diem, or expenses from the member's agency for the member's service may receive per
4883 diem and expenses incurred in the performance of the member's official duties from the board
4884 at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4885 (B) A state government officer and employee member may decline to receive per diem
4886 and expenses for the member's service.

4887 (i) Each board shall annually designate one of its members to serve as chair for a
4888 one-year period.

4889 (j) A board member may not be a member of the faculty of or have any financial
4890 interest in any vocational or professional college or school that provides continuing education
4891 to any licensee if that continuing education is required by statute or rule.

4892 (3) (a) The duties and responsibilities of the board shall be in accordance with

4893 [~~Sections 58-1-202 through 58-1-203. In addition, the board shall designate~~] this Subsection
4894 (3).

4895 (b) The duties, functions, and responsibilities of the board include:

4896 (i) recommending to the director appropriate rules;

4897 (ii) recommending to the director policy and budgetary matters;

4898 (iii) approving and establishing a passing score for applicant examinations;

4899 (iv) screening applicants and recommending licensing, renewal, reinstatement, and
4900 relicensure actions to the director in writing;

4901 (v) assisting the director in establishing standards of supervision for students or
4902 persons in training to become qualified to obtain a license in the occupation or profession it
4903 represents;

4904 (vi) acting as presiding officer in conducting hearings associated with adjudicative
4905 proceedings and in issuing recommended orders when so designated by the director; and

4906 (vii) designating one of its members on a permanent or rotating basis to:

4907 [(a)] (A) assist the division in reviewing complaints concerning the unlawful or
4908 unprofessional conduct of a licensee; and

4909 [(b)] (B) advise the division in its investigation of these complaints.

4910 (c) The following duties, functions, and responsibilities of the division shall be
4911 performed by the division with the collaboration and assistance of the board:

4912 (i) defining which schools, colleges, universities, departments of universities, or other
4913 institutions of learning are reputable and in good standing with the division;

4914 (ii) prescribing license qualifications;

4915 (iii) prescribing rules governing applications for licenses;

4916 (iv) providing for a fair and impartial method of examination of applicants;

4917 (v) defining unprofessional conduct, by rule, to supplement the definitions under this
4918 chapter or other licensing chapters;

4919 (vi) establishing advisory peer committees to the board and prescribing their scope of
4920 authority; and

4921 (vii) establishing conditions for reinstatement and renewal of licenses.

4922 (4) A board member who has, under Subsection (3)(b)(vii), reviewed a complaint or
4923 advised in its investigation is disqualified from participating with the board when the board

4924 serves as a presiding officer of an administrative proceeding concerning the complaint.

4925 Section 85. Section **61-2f-302**, which is renumbered from Section 58-56-9 is
4926 renumbered and amended to read:

4927 ~~[58-56-9]~~. **61-2f-302. Qualifications of inspectors -- Contract for inspection**
4928 **services -- Surcharge for education program.**

4929 (1) All inspectors employed by a local regulator, state regulator, or compliance agency
4930 to enforce provisions of the codes adopted or approved pursuant to this chapter shall:

4931 (a) (i) meet minimum qualifications as established by the division in collaboration with
4932 the commission [or];

4933 (ii) be certified by a nationally recognized organization which promulgates codes
4934 adopted under this chapter[;]; or

4935 (iii) pass an examination developed by the division in collaboration with the
4936 commission;

4937 (b) be currently licensed by the division as meeting those minimum qualifications; and

4938 (c) be subject to revocation or suspension of their license or may be placed on
4939 probation if found guilty of unlawful or unprofessional conduct.

4940 (2) A local regulator, state regulator, or compliance agency may contract for the
4941 services of a licensed inspector not regularly employed by the regulator or agency.

4942 (3) (a) The division shall use the monies received in Subsection (4) to provide
4943 education regarding the codes and code amendments adopted or approved under Section
4944 ~~[58-56-4]~~ 61-2f-201 to:

4945 (i) building inspectors; and

4946 (ii) individuals engaged in construction-related trades or professions.

4947 (b) All funding available for the building inspector's education program shall be
4948 nonlapsing.

4949 (4) Each compliance agency shall charge a 1% surcharge on all building permits issued
4950 and shall transmit 80% of the amount collected to the division to be utilized by the division to
4951 fulfill the requirements of Subsection (3). The surcharge shall be deposited as a dedicated
4952 credit.

4953 Section 86. Section **63-2-302** is amended to read:

4954 **63-2-302. Private records.**

- 4955 (1) The following records are private:
- 4956 (a) records concerning an individual's eligibility for unemployment insurance benefits,
4957 social services, welfare benefits, or the determination of benefit levels;
- 4958 (b) records containing data on individuals describing medical history, diagnosis,
4959 condition, treatment, evaluation, or similar medical data;
- 4960 (c) records of publicly funded libraries that when examined alone or with other records
4961 identify a patron;
- 4962 (d) records received or generated for a Senate or House Ethics Committee concerning
4963 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
4964 meeting, if the ethics committee meeting was closed to the public;
- 4965 (e) records received or generated for a Senate confirmation committee concerning
4966 character, professional competence, or physical or mental health of an individual:
- 4967 (i) if prior to the meeting, the chair of the committee determines release of the records:
- 4968 (A) reasonably could be expected to interfere with the investigation undertaken by the
4969 committee; or
- 4970 (B) would create a danger of depriving a person of a right to a fair proceeding or
4971 impartial hearing; and
- 4972 (ii) after the meeting, if the meeting was closed to the public;
- 4973 (f) employment records concerning a current or former employee of, or applicant for
4974 employment with, a governmental entity that would disclose that individual's home address,
4975 home telephone number, Social Security number, insurance coverage, marital status, or payroll
4976 deductions;
- 4977 (g) records or parts of records under Section 63-2-302.5 that a current or former
4978 employee identifies as private according to the requirements of that section;
- 4979 (h) that part of a record indicating a person's Social Security number or federal
4980 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
4981 31A-26-202, 58-1-301, 61-1-4, ~~61-2-6~~, or 61-2e-301;
- 4982 (i) that part of a voter registration record identifying a voter's driver license or
4983 identification card number, Social Security number, or last four digits of the Social Security
4984 number;
- 4985 (j) a record that:

- 4986 (i) contains information about an individual;
- 4987 (ii) is voluntarily provided by the individual; and
- 4988 (iii) goes into an electronic database that:
- 4989 (A) is designated by and administered under the authority of the Chief Information
- 4990 Officer; and
- 4991 (B) acts as a repository of information about the individual that can be electronically
- 4992 retrieved and used to facilitate the individual's online interaction with a state agency;
- 4993 (k) information provided to the Commissioner of Insurance under:
- 4994 (i) Subsection 31A-23a-115(2)(a); or
- 4995 (ii) Subsection 31A-23a-302(3); and
- 4996 (l) information obtained through a criminal background check under Title 11, Chapter
- 4997 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.
- 4998 (2) The following records are private if properly classified by a governmental entity:
- 4999 (a) records concerning a current or former employee of, or applicant for employment
- 5000 with a governmental entity, including performance evaluations and personal status information
- 5001 such as race, religion, or disabilities, but not including records that are public under Subsection
- 5002 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection (1)(b);
- 5003 (b) records describing an individual's finances, except that the following are public:
- 5004 (i) records described in Subsection 63-2-301(1);
- 5005 (ii) information provided to the governmental entity for the purpose of complying with
- 5006 a financial assurance requirement; or
- 5007 (iii) records that must be disclosed in accordance with another statute;
- 5008 (c) records of independent state agencies if the disclosure of those records would
- 5009 conflict with the fiduciary obligations of the agency;
- 5010 (d) other records containing data on individuals the disclosure of which constitutes a
- 5011 clearly unwarranted invasion of personal privacy; and
- 5012 (e) records provided by the United States or by a government entity outside the state
- 5013 that are given with the requirement that the records be managed as private records, if the
- 5014 providing entity states in writing that the record would not be subject to public disclosure if
- 5015 retained by it.
- 5016 (3) (a) As used in this Subsection (3), "medical records" means medical reports,

5017 records, statements, history, diagnosis, condition, treatment, and evaluation.

5018 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
5019 doctors, or affiliated entities are not private records or controlled records under Section
5020 63-2-303 when the records are sought:

5021 (i) in connection with any legal or administrative proceeding in which the patient's
5022 physical, mental, or emotional condition is an element of any claim or defense; or

5023 (ii) after a patient's death, in any legal or administrative proceeding in which any party
5024 relies upon the condition as an element of the claim or defense.

5025 (c) Medical records are subject to production in a legal or administrative proceeding
5026 according to state or federal statutes or rules of procedure and evidence as if the medical
5027 records were in the possession of a nongovernmental medical care provider.

5028 Section 87. Section **63-38-3.2** is amended to read:

5029 **63-38-3.2. Fees -- Adoption, procedure, and approval -- Establishing and**
5030 **assessing fees without legislative approval.**

5031 (1) As used in this section:

5032 (a) (i) "Agency" means each department, commission, board, council, agency,
5033 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
5034 unit, bureau, panel, or other administrative unit of the state.

5035 (ii) "Agency" does not mean the Legislature or its committees.

5036 (b) "Fee agency" means any agency that is authorized to establish regulatory fees.

5037 (c) "Fee schedule" means the complete list of regulatory fees charged by a fee agency
5038 and the amount of those fees.

5039 (d) "Regulatory fees" means fees established for licensure, registration, or certification.

5040 (2) Each fee agency shall:

5041 (a) adopt a schedule of fees assessed for services provided by the fee agency that are:

5042 (i) reasonable, fair, and reflect the cost of services provided; and

5043 (ii) established according to a cost formula determined by the director of the
5044 Governor's Office of Planning and Budget and the director of the Division of Finance in

5045 conjunction with the agency seeking to establish the regulatory fee;

5046 (b) conduct a public hearing on any proposed regulatory fee and increase or decrease
5047 the proposed regulatory fee based upon the results of the public hearing;

5048 (c) except as provided in Subsection (6), submit the fee schedule to the Legislature as
5049 part of the agency's annual appropriations request;

5050 (d) where necessary, modify the fee schedule to implement the Legislature's actions;
5051 and

5052 (e) deposit all regulatory fees collected under the fee schedule into the General Fund.

5053 (3) A fee agency may not:

5054 (a) set regulatory fees by rule; or

5055 (b) charge or collect any regulatory fee without approval by the Legislature unless the
5056 fee agency has complied with the procedures and requirements of Subsection (5).

5057 (4) The Legislature may approve, increase or decrease and approve, or reject any
5058 regulatory fee submitted to it by a fee agency.

5059 (5) (a) After the public hearing required by this section, a fee agency may establish and
5060 assess regulatory fees without legislative approval if:

5061 (i) the Legislature creates a new program that is to be funded by regulatory fees to be
5062 set by the Legislature; and

5063 (ii) the new program's effective date is before the Legislature's next annual general
5064 session; or

5065 (iii) the Division of [~~Occupational and Professional Licensing~~] Real Estate makes a
5066 special assessment against qualified beneficiaries under the Residence Lien Restriction and
5067 Lien Recovery Fund Act as provided in Subsection 38-11-206(1).

5068 (b) Each fee agency shall submit its fee schedule or special assessment amount to the
5069 Legislature for its approval at a special session, if allowed in the governor's call, or at the next
5070 annual general session of the Legislature, whichever is sooner.

5071 (c) Unless the fee schedule is approved by the Legislature, the fee agency may not
5072 collect a regulatory fee set according to this subsection after the adjournment of the annual
5073 general session following the session that established the new program.

5074 (6) (a) Each fee agency that wishes to increase any regulatory fee by 5% or more shall
5075 obtain legislative approval for the fee increase as provided in this subsection before assessing
5076 the new regulatory fee.

5077 (b) Each fee agency that wishes to increase any regulatory fee by 5% or more shall
5078 submit to the governor as part of the agency's annual appropriation request a list that identifies:

- 5079 (i) the title or purpose of the regulatory fee;
- 5080 (ii) the present amount of the regulatory fee;
- 5081 (iii) the proposed new amount of the regulatory fee;
- 5082 (iv) the percent that the regulatory fee will have increased if the Legislature approves
- 5083 the higher fee; and
- 5084 (v) the reason for the increase in the regulatory fee.
- 5085 (c) (i) The governor may review and approve, modify and approve, or reject the
- 5086 regulatory fee increases.
- 5087 (ii) The governor shall transmit the list required by Subsection (6)(b), with any
- 5088 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.
- 5089 (d) Bills approving any regulatory fee increases of 5% or more shall be filed before the
- 5090 beginning of the Legislature's annual general session, if possible.
- 5091 Section 88. Section **63-46b-1** is amended to read:
- 5092 **63-46b-1. Scope and applicability of chapter.**
- 5093 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
- 5094 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
- 5095 this chapter apply to every agency of the state and govern:
- 5096 (a) state agency action that determines the legal rights, duties, privileges, immunities,
- 5097 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
- 5098 suspend, modify, annul, withdraw, or amend an authority, right, or license; and
- 5099 (b) judicial review of the action.
- 5100 (2) This chapter does not govern:
- 5101 (a) the procedure for making agency rules, or judicial review of the procedure or rules;
- 5102 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
- 5103 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
- 5104 issuance of a tax assessment, except that this chapter governs an agency action commenced by
- 5105 a taxpayer or by another person authorized by law to contest the validity or correctness of the
- 5106 action;
- 5107 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
- 5108 commutation or termination of a sentence, or to the rescission, termination, or revocation of
- 5109 parole or probation, to the discipline of, resolution of a grievance of, supervision of,

5110 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
5111 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
5112 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
5113 judicial review of the action;

5114 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
5115 student or teacher in a school or educational institution, or judicial review of the action;

5116 (e) an application for employment and internal personnel action within an agency
5117 concerning its own employees, or judicial review of the action;

5118 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
5119 Occupational Safety and Health Act, ~~[and]~~ Title 58, Chapter 3a, ~~[Architect]~~ Architects
5120 Licensing Act, Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail
5121 Technician Licensing Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional
5122 Engineers and Professional Land ~~[Surveyor]~~ Surveyors Licensing Act, Chapter 53, Landscape
5123 Architects Licensing Act, ~~[Chapter 55, Utah Construction Trades Licensing Act,]~~ Chapter 63,
5124 Security Personnel Licensing Act, ~~[and]~~ Chapter 76, Professional Geologist Licensing Act, and
5125 Title 61, Chapter 2e, Utah Construction Trades Licensing Act, except that this chapter governs
5126 an agency action commenced by the employer, licensee, or other person authorized by law to
5127 contest the validity or correctness of the citation or assessment;

5128 (g) state agency action relating to management of state funds, the management and
5129 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
5130 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
5131 the state, except as provided in those contracts, or judicial review of the action;

5132 (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of
5133 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
5134 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
5135 Holding Companies, and Title 63, Chapter ~~[30, Utah]~~ 30d, Governmental Immunity Act of
5136 Utah, or judicial review of the action;

5137 (i) the initial determination of a person's eligibility for unemployment benefits, the
5138 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
5139 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
5140 determination of a person's unemployment tax liability;

5141 (j) state agency action relating to the distribution or award of a monetary grant to or
5142 between governmental units, or for research, development, or the arts, or judicial review of the
5143 action;

5144 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
5145 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
5146 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
5147 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
5148 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
5149 Oil Management Act, except that this chapter governs an agency action commenced by a
5150 person authorized by law to contest the validity or correctness of the notice or order;

5151 (l) state agency action, to the extent required by federal statute or regulation, to be
5152 conducted according to federal procedures;

5153 (m) the initial determination of a person's eligibility for government or public
5154 assistance benefits;

5155 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
5156 registration;

5157 (o) a license for use of state recreational facilities;

5158 (p) state agency action under Title 63, Chapter 2, Government Records Access and
5159 Management Act, except as provided in Section 63-2-603;

5160 (q) state agency action relating to the collection of water commissioner fees and
5161 delinquency penalties, or judicial review of the action;

5162 (r) state agency action relating to the installation, maintenance, and repair of headgates,
5163 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
5164 measuring devices, or judicial review of the action;

5165 (s) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

5166 (ii) an action taken by the Division of Securities pursuant to a hearing conducted under
5167 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
5168 of securities described in Subsection 61-1-11.1(1); and

5169 (t) state agency action relating to water well driller licenses, water well drilling permits,
5170 water well driller registration, or water well drilling construction standards, or judicial review
5171 of the action.

- 5172 (3) This chapter does not affect a legal remedy otherwise available to:
- 5173 (a) compel an agency to take action; or
- 5174 (b) challenge an agency's rule.
- 5175 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
- 5176 proceeding, or the presiding officer during an adjudicative proceeding from:
- 5177 (a) requesting or ordering a conference with parties and interested persons to:
- 5178 (i) encourage settlement;
- 5179 (ii) clarify the issues;
- 5180 (iii) simplify the evidence;
- 5181 (iv) facilitate discovery; or
- 5182 (v) expedite the proceeding; or
- 5183 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
- 5184 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
- 5185 except to the extent that the requirements of those rules are modified by this chapter.
- 5186 (5) (a) A declaratory proceeding authorized by Section 63-46b-21 is not governed by
- 5187 this chapter, except as explicitly provided in that section.
- 5188 (b) Judicial review of a declaratory proceeding authorized by Section 63-46b-21 is
- 5189 governed by this chapter.
- 5190 (6) This chapter does not preclude an agency from enacting a rule affecting or
- 5191 governing an adjudicative proceeding or from following the rule, if the rule is enacted
- 5192 according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking
- 5193 Act, and if the rule conforms to the requirements of this chapter.
- 5194 (7) (a) If the attorney general issues a written determination that a provision of this
- 5195 chapter would result in the denial of funds or services to an agency of the state from the federal
- 5196 government, the applicability of the provision to that agency shall be suspended to the extent
- 5197 necessary to prevent the denial.
- 5198 (b) The attorney general shall report the suspension to the Legislature at its next
- 5199 session.
- 5200 (8) Nothing in this chapter may be interpreted to provide an independent basis for
- 5201 jurisdiction to review final agency action.
- 5202 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good

5203 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
5204 the time period established for judicial review.

5205 Section 89. Section **63A-5-206** is amended to read:

5206 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
5207 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
5208 **governments for construction or modification of certain facilities.**

5209 (1) As used in this section:

5210 (a) "Analysis" means an economic assessment of competing design and maintenance
5211 alternatives, the object of which is to reduce cost and conserve energy.

5212 (b) "Capital developments" and "capital improvements" have the same meaning as
5213 provided in Section 63A-5-104.

5214 (c) "Compliance agency" has the same meaning as provided in Subsection [~~58-56-3(4)~~]
5215 61-2f-103(4).

5216 (d) (i) "Facility" means any building, structure, or other improvement that is
5217 constructed on property owned by the state, its departments, commissions, institutions, or
5218 agencies.

5219 (ii) "Facility" does not mean an unoccupied structure that is a component of the state
5220 highway system.

5221 (e) "Life cycle cost-effective" means the lowest cost of owning and operating a facility
5222 over a 25-year period, including the initial cost, energy costs, operation and maintenance costs,
5223 repair costs, and the costs of energy conservation and renewable energy systems.

5224 (f) "Local government" means the county, municipality, or local school district that
5225 would have jurisdiction to act as the compliance agency if the property on which the project is
5226 being constructed were not owned by the state.

5227 (g) "Renewable energy system" means a system designed to use solar, wind,
5228 geothermal power, wood, or other replenishable energy source to heat, cool, or provide
5229 electricity to a building.

5230 (2) (a) Except as provided in Subsections (3) and (4), the director shall exercise direct
5231 supervision over the design and construction of all new facilities, and all alterations, repairs,
5232 and improvements to existing facilities if the total project construction cost, regardless of the
5233 funding source, is greater than \$100,000.

5234 (b) The director shall prepare or have prepared by private firms or individuals designs,
5235 plans, and specifications for the projects administered by the division.

5236 (c) Before proceeding with construction, the director and the officials charged with the
5237 administration of the affairs of the particular department, commission, institution, or agency
5238 shall approve the location, design, plans, and specifications.

5239 (3) Projects for the construction of new facilities and alterations, repairs, and
5240 improvements to existing facilities are not subject to Subsection (2) if the project:

5241 (a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

5242 (b) is within a designated research park at the University of Utah or Utah State
5243 University;

5244 (c) occurs within the boundaries of This is the Place State Park and is administered by
5245 This is the Place Foundation except that This is the Place Foundation may request the director
5246 to administer the design and construction; or

5247 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
5248 Percent-for-Art Program.

5249 (4) (a) (i) The State Building Board may authorize the delegation of control over
5250 design, construction, and all other aspects of any project to entities of state government on a
5251 project-by-project basis or for projects within a particular dollar range and a particular project
5252 type.

5253 (ii) The state entity to whom control is delegated shall assume fiduciary control over
5254 project finances, shall assume all responsibility for project budgets and expenditures, and shall
5255 receive all funds appropriated for the project, including any contingency funds contained in the
5256 appropriated project budget.

5257 (iii) Delegation of project control does not exempt the state entity from complying with
5258 the codes and guidelines for design and construction adopted by the division and the State
5259 Building Board.

5260 (iv) State entities that receive a delegated project may not access, for the delegated
5261 project, the division's statewide contingency reserve and project reserve authorized in Section
5262 63A-5-209.

5263 (b) For facilities that will be owned, operated, maintained, and repaired by an entity
5264 that is not a state agency or institution and that are located on state property, the State Building

5265 Board may authorize the owner to administer the design and construction of the project instead
5266 of the division.

5267 (5) Notwithstanding any other provision of this section, if a donor donates land to an
5268 eligible institution of higher education and commits to build a building or buildings on that
5269 land, and the institution agrees to provide funds for the operations and maintenance costs from
5270 sources other than state funds, and agrees that the building or buildings will not be eligible for
5271 state capital improvement funding, the higher education institution may:

5272 (a) oversee and manage the construction without involvement, oversight, or
5273 management from the division; or

5274 (b) arrange for management of the project by the division.

5275 (6) (a) The role of compliance agency as provided in Title [58] 61, Chapter [56] 2f,
5276 Utah Uniform Building Standards Act, shall be provided by:

5277 (i) the director, for projects administered by the division;

5278 (ii) the entity designated by the State Capitol Preservation Board, for projects under
5279 Subsection (3)(a);

5280 (iii) the local government, for projects exempt from the division's administration under
5281 Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

5282 (iv) the state entity or local government designated by the State Building Board, for
5283 projects under Subsection (4); or

5284 (v) the institution, for projects exempt from the division's administration under
5285 Subsection (5)(a).

5286 (b) For the installation of art under Subsection (3)(d), the role of compliance agency
5287 shall be provided by the entity that is acting in this capacity for the balance of the project as
5288 provided in Subsection (6)(a).

5289 (c) The local government acting as the compliance agency under Subsection (6)(a)(iii)
5290 may:

5291 (i) only review plans and inspect construction to enforce the building codes as adopted
5292 by the Uniform Building Codes Commission; and

5293 (ii) charge a building permit fee of no more than the amount it could have charged if
5294 the land upon which the improvements are located were not owned by the state.

5295 (d) (i) The use of state property and any improvements constructed on state property,

5296 including improvements constructed by nonstate entities, is not subject to the zoning authority
5297 of local governments as provided in Section 10-9-105.

5298 (ii) The state entity controlling the use of the state property shall consider any input
5299 received from the local government in determining how the property shall be used.

5300 (7) Before construction may begin, the director shall review the design of projects
5301 exempted from the division's administration under Subsection (4) to determine if the design:

5302 (a) complies with any restrictions placed on the project by the State Building Board;
5303 and

5304 (b) is appropriate for the purpose and setting of the project.

5305 (8) (a) The director shall ensure that state-owned facilities, except for facilities under
5306 the control of the State Capitol Preservation Board, are life cycle cost-effective.

5307 (b) The estimated cost of the analysis shall be included in each program budget
5308 document and in the project funding request submitted to the State Building Board, the
5309 governor, and the Legislature.

5310 (c) The final cost estimate shall reflect the most life cycle cost-effective building.

5311 (d) The State Building Board, in consultation with the director and the State Energy
5312 Manager, shall make rules to implement this Subsection (8) by following the procedures and
5313 requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

5314 (e) The State Building Board may exempt a facility from being life cycle cost-effective
5315 pursuant to rules, after reviewing and concurring with a written request and justification from
5316 the director.

5317 (9) The director may expend appropriations for statewide projects from funds provided
5318 by the Legislature for those specific purposes and within guidelines established by the State
5319 Building Board.

5320 (10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst,
5321 shall develop standard forms to present capital development and capital improvement cost
5322 summary data.

5323 (b) The director shall:

5324 (i) within 30 days after the completion of each capital development project, submit cost
5325 summary data for the project on the standard form to the Office of Legislative Fiscal Analyst;
5326 and

5327 (ii) upon request, submit cost summary data for a capital improvement project to the
5328 Office of Legislative Fiscal Analyst on the standard form.

5329 (11) Notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures
5330 Act, the director may:

5331 (a) accelerate the design of projects funded by any appropriation act passed by the
5332 Legislature in its annual general session;

5333 (b) use any unencumbered existing account balances to fund that design work; and

5334 (c) reimburse those account balances from the amount funded for those projects when
5335 the appropriation act funding the project becomes effective.

5336 (12) (a) The director, his designee, or the state entity to whom control has been
5337 designated under Subsection (4), shall notify in writing the elected representatives of local
5338 government entities directly and substantively affected by any diagnostic, treatment, parole,
5339 probation, or other secured facility project exceeding \$250,000, if:

5340 (i) the nature of the project has been significantly altered since prior notification;

5341 (ii) the project would significantly change the nature of the functions presently
5342 conducted at the location; or

5343 (iii) the project is new construction.

5344 (b) At the request of either the state entity or the local government entity,
5345 representatives from the state entity and the affected local entity shall conduct or participate in
5346 a local public hearing or hearings to discuss these issues.

5347 Section 90. Section **70D-1-19** is amended to read:

5348 **70D-1-19. Definitions.**

5349 As used in this chapter:

5350 (1) "Manufactured home" means a transportable factory built housing unit constructed
5351 on or after June 15, 1976, according to the National Manufactured Housing Construction and
5352 Safety Standards Act of 1974, in one or more sections, which, in the traveling mode, is eight
5353 body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or
5354 more square feet, and which is built on a permanent chassis and designed to be used as a
5355 dwelling with or without a permanent foundation when connected to the required utilities, and
5356 includes the plumbing, heating, air-conditioning, and electrical systems.

5357 (2) "Mobile home" means a transportable factory built housing unit built prior to June

5358 15, 1976, in accordance with a state mobile home code which existed prior to the National
5359 Manufactured Housing Construction and Safety Standards Act of 1974.

5360 (3) "Permanently affixed" means anchored to, and supported by, a permanent
5361 foundation or installed in accordance with the manufactured housing installation standard code
5362 referred to in Section ~~[58-56-4]~~ 61-2f-201.

5363 Section 91. Section **77-18-15** is amended to read:

5364 **77-18-15. Retention of expunged records -- Agencies.**

5365 (1) The division shall keep, index, and maintain all expunged records of arrests and
5366 convictions.

5367 (2) Employees of the division may not divulge any information contained in its index
5368 to any person or agency without a court order, except to the following:

5369 (a) the Board of Pardons and Parole;

5370 (b) the Peace Officer Standards and Training;

5371 (c) federal authorities, unless prohibited by federal law;

5372 (d) the Division of Occupational and Professional Licensing; ~~[and]~~

5373 (e) the Division of Real Estate for purposes of Title 61, Chapter 2e, Utah Construction
5374 Trades Licensing Act; and

5375 ~~[(e)]~~ (f) the State Office of Education.

5376 (3) The division may also use the information in its index for the purpose of
5377 establishing good character for issuance of a concealed firearm permit as provided in Section
5378 53-5-704.

5379 (4) A person whose records are released under Subsection (2) shall be given a
5380 reasonable opportunity by the recipient agency to challenge and explain any information in the
5381 records and to challenge the relevancy of that information before a final determination is made
5382 by the agency.

5383 (5) A court may permit inspection or release of an expunged record only upon petition
5384 by the person who is the subject of the record and only to the persons named in the petition.

5385 (6) (a) For judicial sentencing, a court may order any records sealed under this section
5386 to be opened and admitted into evidence.

5387 (b) The records are confidential and are available for inspection only by the court,
5388 parties, counsel for the parties, and any other person who is authorized by the court to inspect

5389 them.

5390 (c) At the end of the action or proceeding, the court shall order the records sealed
5391 again.

5392 (7) Records released under this section are classified as protected under Section
5393 63-2-304 and are accessible only as provided under Title 63, Chapter 2, Part 2, Access to
5394 Records.

5395 Section 92. **Transition clause.**

5396 (1) All rules relating to the regulation and administration of the contractor industry
5397 lawfully adopted by the Division of Occupations and Professional Licensing in accordance
5398 with Title 58, Chapter 55, Utah Construction Trades Licensing Act and Title 58, Chapter 56,
5399 Utah Uniform Building Standards Act, and in effect as of June 30, 2006, shall:

5400 (a) be transferred to rules issued by the Division of Real Estate; and

5401 (b) continue to be in effect until amended or rescinded by the Division of Real Estate.

5402 (2) A license relating to the contractor industry in effect on June 30, 2006, issued by
5403 the Department of Occupational and Professional Licensing is converted to a license issued by
5404 the Division of Real Estate as of July 1, 2006.

5405 (3) Each current member appointed to the boards and commission created under Title
5406 58, Chapters 55 and 56, as of June 30, 2006, shall fulfill that member's current term as
5407 provided for by statute under Title 61, Chapters 2e and 2f.

5408 (4) The Division of Occupational and Professional Licensing shall assign or otherwise
5409 transfer effective July 1, 2006, to the Division of Real Estate the contract entered into, as
5410 provided in Subsection 38-1-27(2), with the third party vendor for the creation and
5411 maintenance of the Construction Notice Registry Database.

5412 Section 93. **Effective date.**

5413 This bill takes effect on July 1, 2006.

5414 Section 94. **Coordinating 1st Sub. H.B. 302 with 1st Sub. H.B. 105.**

5415 If this 1st Sub. H.B. 302 and 1st Sub. H.B. 105, Construction Filing Amendments, both
5416 pass, it is the intent of the Legislature that the Office of Legislative Research and General
5417 Counsel when preparing the Utah Code database for publication change the reference in
5418 Subsection 38-1-11(4)(f) of 1st Sub. H.B. 105 from "Division of Occupational and Professional
5419 Licensing" to the "Division of Real Estate."

5420 Section 95. **Coordinating 1st Sub. H.B. 302 with S.B. 87.**

5421 If this 1st Sub. H.B. 302 and S.B. 87, Residence Lien Restriction and Lien Recovery
5422 Fund Amendments, both pass it is the intent of the Legislature that the Office of Legislative
5423 Research and General Counsel when preparing the Utah Code database for publication change
5424 the reference in Subsection 63-38-3.2(1)(d)(ii) in S.B. 87 from the "Division of Occupational
5425 and Professional Licensing" to the "Division of Real Estate."

State Impact

The 30 FTE involved in regulating the construction industry would be moved from the Division of Professional Licensing (DOPL) to the Division of Real Estate at no cost. Some of DOPL's support staff would not transfer as they service many other professions. Commerce would need an Administrative Secretary, an Office Specialist, an Assistant Manager, and an Administrative Law Judge. Total costs for the first year (FY 07) are \$280,100 from the Commerce Service Fund. Spending from the Commerce Service Fund could affect revenue available to the General Fund.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Commerce Service Fund	\$0	\$280,100	\$0	\$0
TOTAL	\$0	\$280,100	\$0	\$0

Individual and Business Impact

No fiscal impact.
