

57 (ii) a corporation; or

58 (iii) publicly traded.

59 ~~[(4)]~~ (e) "Wages" means ~~[a]]~~ the amounts due the employee for labor or services,
60 whether the amount is fixed or ascertained on a time, task, piece, commission basis or other
61 method of calculating such amount.

62 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
63 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
64 be the employer of each ~~H→~~ ~~[member-of]~~ individual who, directly or indirectly, holds an
64a ownership interest in ~~←H~~ the unincorporated entity.

65 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
66 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
67 under Subsection (2)(a) for ~~H→~~ ~~[a-member]~~ an individual ~~←H~~ by establishing by clear and
67a convincing evidence that the
68 ~~H→~~ ~~[member]~~ individual ~~←H~~ :

69 (i) is an active manager of the unincorporated entity;

70 (ii) directly or indirectly holds at least a ~~H→~~ ~~[20%]~~ 8% ~~←H~~ ownership interest in the
70a unincorporated
71 entity; or

72 (iii) is not subject to supervision or control in the performance of work by:

73 (A) the unincorporated entity; or

74 (B) a person with whom the unincorporated entity contracts.

75 (c) As part of the rules made under Subsection (2)(b), the commission may define:

76 (i) "active manager";

77 (ii) "directly or indirectly holds at least a ~~H→~~ ~~[20%]~~ 8% ~~←H~~ ownership interest"; and

78 (iii) "subject to supervision or control in the performance of work."

79 (d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah
80 Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7,
81 under which an unincorporated entity may seek approval of a mutual agreement to pay wages
82 on non-regular paydays.

83 Section 2. Section **34A-2-103** is amended to read:

84 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
85 **Statutory employers.**

86 (1) (a) The state, and each county, city, town, and school district in the state are
87 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

336 school against one of its employees, applicants, or members because the employee, applicant,
337 or member:

338 ~~[(a)]~~ (i) has opposed any employment practice prohibited under this chapter; or

339 ~~[(b)]~~ (ii) filed charges, testified, assisted, or participated in any way in any proceeding,
340 investigation, or hearing under this chapter.

341 (r) "Unincorporated entity" means an entity organized or doing business in the state
342 that is not:

343 (i) an individual;

344 (ii) a corporation; or

345 (iii) publicly traded.

346 ~~[(18)]~~ (s) "Vocational school" means any school or institution conducting a course of
347 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to
348 pursue a manual, technical, industrial, business, commercial, office, personal services, or other
349 nonprofessional occupations.

350 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
351 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
352 be the employer of each ~~H→~~ [member-of] individual who, directly or indirectly, holds an
352a ownership interest in ~~←H~~ the unincorporated entity.

353 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
354 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
355 under Subsection (2)(a) for ~~H→~~ [a-member] an individual ~~←H~~ by establishing by clear and
355a convincing evidence that the

356 ~~H→~~ [member] individual ~~←H~~ :

357 (i) is an active manager of the unincorporated entity;

358 (ii) directly or indirectly holds at least a ~~H→~~ [20%] 8% ~~←H~~ ownership interest in the
358a unincorporated

359 entity; or

360 (iii) is not subject to supervision or control in the performance of work by:

361 (A) the unincorporated entity; or

362 (B) a person with whom the unincorporated entity contracts.

363 (c) As part of the rules made under Subsection (2)(b), the commission may define:

364 (i) "active manager";

365 (ii) "directly or indirectly holds at least a ~~H→~~ [20%] 8% ~~←H~~ ownership interest"; and

366 (iii) "subject to supervision or control in the performance of work."

398 ~~[(11)]~~ (k) "Person" means the general public, one or more individuals, partnerships,
399 associations, corporations, legal representatives, trustees, receivers, and the state and its
400 political subdivisions.

401 ~~[(12)]~~ (l) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah
402 Administrative Rulemaking Act.

403 ~~[(13)]~~ (m) "Secretary" means the Secretary of the United States Department of Labor.

404 ~~[(14)]~~ (n) "Standard" means an occupational health and safety standard or group of
405 standards which requires conditions, or the adoption or use of one or more practices, means,
406 methods, operations, or processes, reasonably necessary to provide safety and healthful
407 employment and places of employment.

408 (o) "Unincorporated entity" means an entity organized or doing business in the state
409 that is not:

410 (i) an individual;

411 (ii) a corporation; or

412 (iii) publicly traded.

413 ~~[(15)]~~ (p) "Variance" means a special, limited modification or change in the code or
414 standard applicable to the particular establishment of the employer or person petitioning for the
415 modification or change.

416 ~~[(16)]~~ (q) "Workplace" means any place of employment.

417 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
418 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
419 be the employer of each ~~H→~~ [member-of] individual who, directly or indirectly, holds an
419a ownership interest in ~~←H~~ the unincorporated entity.

420 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
421 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
422 under Subsection (2)(a) for ~~H→~~ [a-member] an individual ~~←H~~ by establishing by clear and
422a convincing evidence that the

423 ~~H→~~ [member] individual ~~←H~~ :

424 (i) is an active manager of the unincorporated entity;

425 (ii) directly or indirectly holds at least a ~~H→~~ [20%] 8% ~~←H~~ ownership interest in the
425a unincorporated
426 entity; or

427 (iii) is not subject to supervision or control in the performance of work by:

428 (A) the unincorporated entity; or

429 (B) a person with whom the unincorporated entity contracts.

430 (c) As part of the rules made under Subsection (2)(b), the commission may define:

431 (i) "active manager";

432 (ii) "directly or indirectly holds at least a ~~10%~~ 8% ~~←10~~ ownership interest"; and

433 (iii) "subject to supervision or control in the performance of work."

434 Section 5. Section **58-55-102** is amended to read:

435 **58-55-102. Definitions.**

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

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

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

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

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

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

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

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

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

455 (4) "Apprentice electrician" means a person licensed under this chapter as an
456 apprentice electrician who is learning the electrical trade under the immediate supervision of a
457 master electrician, residential master electrician, a journeyman electrician, or a residential
458 journeyman electrician.

459 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice

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

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

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

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

968 (10) (a) A licensee that is an unincorporated entity shall file an ownership status report
969 with the division every 90 days after the day on which the license is issued if the licensee has as
970 an owner an individual who:

971 (i) owns an interest in the contractor that is an unincorporated entity;

972 (ii) owns, directly or indirectly, less than a ~~15~~→ [20%] 8% ←~~15~~ interest in the
972a unincorporated entity, as

973 defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah
974 Administrative Rulemaking Act; and

975 (iii) engages, or will engage, in a construction trade in Utah as an owner of the
976 contractor described in Subsection (10)(a)(i).

977 (b) An ownership status report required under this Subsection (10) shall:

978 (i) list each addition or deletion of an owner:

979 (A) for the first ownership status report, after the day on which the unincorporated
980 entity is licensed under this chapter; and

981 (B) for a subsequent ownership status report, after the day on which the previous
982 ownership status report is filed;

983 (ii) be in a format prescribed by the division that is consistent with a list provided
984 under Subsection 58-55-302(1)(e)(iv); and

985 (iii) be accompanied by a fee set by the division in accordance with Section 63J-1-504
986 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

1111 (24) an unincorporated entity licensed under this chapter having an individual who
 1112 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
 1113 lawfully present in the United States; or

1114 (25) an unincorporated entity failing to provide the following for an individual who
 1115 engages, or will engage, in a construction trade in Utah for the unincorporated entity:

1116 (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2,
 1117 Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

1118 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
 1119 Employment Security Act, for an individual who owns, directly or indirectly, less than a

1119a ~~H~~ → [20%] 8% ← ~~H~~

1120 interest in the unincorporated entity, as defined by rule made by the division in accordance with
 1121 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1122 Section 10. Section **58-55-502** is amended to read:

1123 **58-55-502. Unprofessional conduct.**

1124 Unprofessional conduct includes:

1125 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed
 1126 as a contractor under this chapter;

1127 (2) disregarding or violating through gross negligence or a pattern of negligence:

1128 (a) the building or construction laws of this state or any political subdivision;

1129 (b) the safety and labor laws applicable to a project;

1130 (c) any provision of the health laws applicable to a project;

1131 (d) the workers' compensation insurance laws of this state applicable to a project;

1132 (e) the laws governing withholdings for employee state and federal income taxes,

1133 unemployment taxes, ~~FICA~~ Social Security payroll taxes, or other required withholdings; or

1134 (f) any reporting, notification, and filing laws of this state or the federal government;

1135 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
 1136 licensee's direction which causes material injury to another;

1137 (4) contract violations that pose a threat or potential threat to the public health, safety,
 1138 and welfare including:

1139 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or

1140 specifications, or abandonment or failure to complete a project without the consent of the

1141 owner or ~~his~~ the owner's duly authorized representative or the consent of any other person

1142 entitled to have the particular project completed in accordance with the plans, specifications,
1143 and contract terms;

1144 (b) failure to deposit funds to the benefit of an employee as required under any written
1145 contractual obligation the licensee has to the employee;

1146 (c) failure to maintain in full force and effect any health insurance benefit to an
1147 employee that was extended as a part of any written contractual obligation or representation by
1148 the licensee, unless the employee is given written notice of the licensee's intent to cancel or
1149 reduce the insurance benefit at least 45 days before the effective date of the cancellation or
1150 reduction;

1151 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section
1152 38-11-207;

1153 (e) failure to provide, when applicable, the information required by Section 38-11-108;
1154 and

1155 (f) willfully or deliberately misrepresenting or omitting a material fact in connection
1156 with an application to claim recovery from the Residence Lien Recovery Fund under Section
1157 38-11-204;

1158 (5) failing as an alarm company to notify the division of the cessation of performance
1159 of its qualifying agent, or failing to replace its qualifying agent as required under Section
1160 58-55-304;

1161 (6) failing as an alarm company agent to carry or display a copy of the licensee's
1162 license as required under Section 58-55-311; ~~or~~

1163 (7) failing to comply with operating standards established by rule in accordance with
1164 Section 58-55-308[-];

1165 (8) an unincorporated entity licensed under this chapter ~~H~~→ through a pattern of
1165a negligence ←H having an individual who owns
1166 an interest in the unincorporated entity engage in a construction trade in Utah while not
1167 lawfully present in the United States; or

1168 (9) an unincorporated entity failing to provide the following for an individual who
1169 engages, or will engage, in a construction trade in Utah for the unincorporated entity:

1170 (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2,
1171 Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

1172 (b) unemployment compensation in accordance with Title 35A, Chapter 4,

1173 Employment Security Act, for an individual who owns, directly or indirectly, less than a
 1173a 8
 1174 interest in the unincorporated entity, as defined by rule made by the division in accordance with
 1175 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1176 Section 11. Section **58-55-503** is amended to read:

1177 **58-55-503. Penalty for unlawful conduct -- Citations.**

1178 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
 1179 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), [or] (23), (24), or (25), or Subsection
 1180 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
 1181 guilty of a class A misdemeanor.

1182 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
 1183 individual and does not include a sole proprietorship, joint venture, corporation, limited
 1184 liability company, association, or organization of any type.

1185 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
 1186 awarded and may not accept a contract for the performance of the work.

1187 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
 1188 infraction unless the violator did so with the intent to deprive the person to whom money is to
 1189 be paid of the money received, in which case the violator is guilty of theft, as classified in
 1190 Section 76-6-412.

1191 (3) Grounds for immediate suspension of the licensee's license by the division and the
 1192 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
 1193 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
 1194 report to, or notify the division with respect to any matter for which application, notification, or
 1195 reporting is required under this chapter or rules adopted under this chapter, including applying
 1196 to the division for a new license to engage in a new specialty classification or to do business
 1197 under a new form of organization or business structure, filing with the division current
 1198 financial statements, notifying the division concerning loss of insurance coverage, or change in
 1199 qualifier.

1200 (4) (a) If upon inspection or investigation, the division concludes that a person has
 1201 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
 1202 (10), (12), (14), (19), (21), (22), [or] (23), (24), or (25), or Subsection 58-55-504(2), or any rule
 1203 or order issued with respect to these subsections, and that disciplinary action is appropriate, the

1266 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
1267 (10), (12), (14), [~~or~~] (19), (24), or (25), or Subsection 58-55-504(2); and

1268 (IV) after determining that the person committed a second or subsequent offense under
1269 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
1270 Subsection (4)(i)(i)(B)(I).

1271 (ii) In issuing a final order for a second or subsequent offense under Subsection
1272 (4)(i)(i), the division shall comply with the requirements of this section.

1273 (j) In addition to any other licensure sanction or fine imposed under this section, the
1274 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
1275 two or more times within a 12-month period ~~H~~→ [z] , **unless, with respect to a violation of**
1275a **Subsection 58-55-501 (24), the licensee can demonstrate that the licensee successfully verified**
1275b **the federal legal working status of the individual who was the subject of the violation using a**
1275c **status verification system, as defined in Section 13-47-102.** ←~~H~~

1276 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
1277 for each individual is considered a separate violation.

1278 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
1279 into the Commerce Service Account created by Section 13-1-2.

1280 (b) A penalty [~~which~~] that is not paid may be collected by the director by either
1281 referring the matter to a collection agency or bringing an action in the district court of the
1282 county in which the person against whom the penalty is imposed resides or in the county where
1283 the office of the director is located.

1284 (c) A county attorney or the attorney general of the state is to provide legal assistance
1285 and advice to the director in any action to collect the penalty.

1286 (d) In an action brought to enforce the provisions of this section, reasonable [~~attorney's~~]
1287 attorney fees and costs shall be awarded.

1288 Section 12. Section **63G-2-302** is amended to read:

1289 **63G-2-302. Private records.**

1290 (1) The following records are private:

1291 (a) records concerning an individual's eligibility for unemployment insurance benefits,
1292 social services, welfare benefits, or the determination of benefit levels;

1293 (b) records containing data on individuals describing medical history, diagnosis,
1294 condition, treatment, evaluation, or similar medical data;

1295 (c) records of publicly funded libraries that when examined alone or with other records
1296 identify a patron;