

Senator Karen Mayne proposes the following substitute bill:

CONSTRUCTION LICENSEES RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies labor, commerce, and general government provisions to address issues related to construction licensees that are unincorporated entities.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to wages, workers' compensation, antidiscrimination, and occupational safety and health, to address coverage of owners of unincorporated entities that are construction licensees;
- ▶ amends definitions;
- ▶ modifies requirements related to applying for a contractor license;
- ▶ addresses demonstration of financial responsibility;
- ▶ addresses administrative actions that can be taken related to unprofessional or unlawful conduct;
- ▶ addresses lawful presence in the United States;
- ▶ imposes workers' compensation and unemployment coverage requirements related to certain construction licensees; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill takes effect on July 1, 2011.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **34-28-2**, as last amended by Laws of Utah 1997, Chapter 375

32 **34A-2-103**, as last amended by Laws of Utah 2008, Chapters 250, 263, and 318

33 **34A-5-102**, as last amended by Laws of Utah 2008, Chapter 382

34 **34A-6-103**, as last amended by Laws of Utah 2008, Chapter 382

35 **58-55-102**, as last amended by Laws of Utah 2010, Chapters 27, 53, and 227

36 **58-55-302**, as last amended by Laws of Utah 2010, Chapters 227 and 372

37 **58-55-306**, as last amended by Laws of Utah 2002, Chapter 241

38 **58-55-401**, as renumbered and amended by Laws of Utah 1994, Chapters 181 and 308

39 **58-55-501**, as last amended by Laws of Utah 2010, Chapters 53 and 387

40 **58-55-502**, as last amended by Laws of Utah 2001, Chapter 198

41 **58-55-503**, as last amended by Laws of Utah 2010, Chapters 278 and 387

42 **63G-2-302**, as last amended by Laws of Utah 2010, Chapters 36 and 379

43 **63G-11-104**, as last amended by Laws of Utah 2010, Chapter 191



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

46 Section 1. Section **34-28-2** is amended to read:

47 **34-28-2. Definitions -- Unincorporated entities.**

48 (1) As used in this chapter:

49 [~~(1)~~] (a) "Commission" means the Labor Commission.

50 [~~(2)~~] (b) "Division" means the Division of Antidiscrimination and Labor.

51 [~~(3)~~] (c) "Employer" includes every person, firm, partnership, association, corporation,
52 receiver or other officer of a court of this state, and any agent or officer of any of the
53 above-mentioned classes, employing any person in this state.

54 (d) "Unincorporated entity" means an entity organized or doing business in the state
55 that is not:

56 (i) an individual;

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.

88 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
89 Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is
90 considered to be a single employer and includes any office, department, agency, authority,
91 commission, board, institution, hospital, college, university, or other instrumentality of the
92 state.

93 (2) (a) Except as provided in Subsection (4), each person, including each public utility
94 and each independent contractor, who regularly employs one or more workers or operatives in
95 the same business, or in or about the same establishment, under any contract of hire, express or
96 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
97 Occupational Disease Act.

98 (b) As used in this Subsection (2):

99 (i) "Independent contractor" means any person engaged in the performance of any work
100 for another who, while so engaged, is:

101 (A) independent of the employer in all that pertains to the execution of the work;

102 (B) not subject to the routine rule or control of the employer;

103 (C) engaged only in the performance of a definite job or piece of work; and

104 (D) subordinate to the employer only in effecting a result in accordance with the
105 employer's design.

106 (ii) "Regularly" includes all employments in the usual course of the trade, business,
107 profession, or occupation of the employer, whether continuous throughout the year or for only a
108 portion of the year.

109 (3) (a) The client under a professional employer organization agreement regulated
110 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

111 (i) is considered the employer of a covered employee; and

112 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
113 covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

114 (b) The division shall promptly inform the Insurance Department if the division has
115 reason to believe that a professional employer organization is not in compliance with
116 Subsection 34A-2-201(1) or (2) and commission rules.

117 (4) A domestic employer who does not employ one employee or more than one
118 employee at least 40 hours per week is not considered an employer under this chapter and

119 Chapter 3, Utah Occupational Disease Act.

120 (5) (a) As used in this Subsection (5):

121 (i) (A) "agricultural employer" means a person who employs agricultural labor as
122 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
123 Subsection 35A-4-206(3); and

124 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
125 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
126 employer is a corporation, partnership, or other business entity, "agricultural employer" means
127 an officer, director, or partner of the business entity;

128 (ii) "employer's immediate family" means:

129 (A) an agricultural employer's:

130 (I) spouse;

131 (II) grandparent;

132 (III) parent;

133 (IV) sibling;

134 (V) child;

135 (VI) grandchild;

136 (VII) nephew; or

137 (VIII) niece;

138 (B) a spouse of any person provided in Subsection (5)(a)(ii)(A)(II) through (VIII); or

139 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as
140 defined by rules of the commission; and

141 (iii) "nonimmediate family" means a person who is not a member of the employer's
142 immediate family.

143 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
144 agricultural employer is not considered an employer of a member of the employer's immediate
145 family.

146 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
147 agricultural employer is not considered an employer of a nonimmediate family employee if:

148 (i) for the previous calendar year the agricultural employer's total annual payroll for all
149 nonimmediate family employees was less than \$8,000; or

150 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
151 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
152 \$50,000; and

153 (B) the agricultural employer maintains insurance that covers job-related injuries of the
154 employer's nonimmediate family employees in at least the following amounts:

155 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

156 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
157 defined in Section 31A-1-301.

158 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
159 agricultural employer is considered an employer of a nonimmediate family employee if:

160 (i) for the previous calendar year the agricultural employer's total annual payroll for all
161 nonimmediate family employees is equal to or greater than \$50,000; or

162 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
163 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

164 (B) the agricultural employer fails to maintain the insurance required under Subsection
165 (5)(c)(ii)(B).

166 (6) An employer of agricultural laborers or domestic servants who is not considered an
167 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
168 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

169 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

170 (b) the rules of the commission.

171 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
172 persons that procures work to be done by a contractor notwithstanding whether or not the
173 person directly employs a person:

174 (A) a sole proprietorship;

175 (B) a corporation;

176 (C) a partnership;

177 (D) a limited liability company; or

178 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

179 (ii) If an employer procures any work to be done wholly or in part for the employer by
180 a contractor over whose work the employer retains supervision or control, and this work is a

181 part or process in the trade or business of the employer, the contractor, all persons employed by
182 the contractor, all subcontractors under the contractor, and all persons employed by any of
183 these subcontractors, are considered employees of the original employer for the purposes of
184 this chapter and Chapter 3, Utah Occupational Disease Act.

185 (b) Any person who is engaged in constructing, improving, repairing, or remodeling a
186 residence that the person owns or is in the process of acquiring as the person's personal
187 residence may not be considered an employee or employer solely by operation of Subsection
188 (7)(a).

189 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
190 employee under Subsection (7)(a) if the employer who procures work to be done by the
191 partnership or sole proprietorship obtains and relies on either:

192 (i) a valid certification of the partnership's or sole proprietorship's compliance with
193 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
194 workers' compensation benefits pursuant to Section 34A-2-201; or

195 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
196 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
197 issued by an insurer pursuant to Section 31A-22-1011 stating that:

198 (A) the partnership or sole proprietorship is customarily engaged in an independently
199 established trade, occupation, profession, or business; and

200 (B) the partner or owner personally waives the partner's or owner's entitlement to the
201 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
202 partnership or sole proprietorship.

203 (d) A director or officer of a corporation is not considered an employee under
204 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
205 34A-2-104(4).

206 (e) A contractor or subcontractor is not an employee of the employer under Subsection
207 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
208 and relies on either:

209 (i) a valid certification of the contractor's or subcontractor's compliance with Section
210 34A-2-201; or

211 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a

212 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
213 workers' compensation coverage waiver issued by an insurer pursuant to Section 31A-22-1011
214 stating that:

215 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
216 independently established trade, occupation, profession, or business; and

217 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
218 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
219 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
220 proprietorship's enterprise under a contract of hire for services.

221 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

222 (A) is an employer; and

223 (B) procures work to be done wholly or in part for the employer by a contractor,
224 including:

225 (I) all persons employed by the contractor;

226 (II) all subcontractors under the contractor; and

227 (III) all persons employed by any of these subcontractors.

228 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
229 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
230 Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor
231 or subcontractor described in Subsection (7)(f)(i)(B).

232 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

233 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
234 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
235 comply with Section 34A-2-201;

236 (B) (I) secures the payment of workers' compensation benefits for the contractor or
237 subcontractor pursuant to Section 34A-2-201;

238 (II) procures work to be done that is part or process of the trade or business of the
239 eligible employer; and

240 (III) does the following with regard to a written workplace accident and injury
241 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

242 (Aa) adopts the workplace accident and injury reduction program;

243 (Bb) posts the workplace accident and injury reduction program at the work site at
244 which the eligible employer procures work; and

245 (Cc) enforces the workplace accident and injury reduction program according to the
246 terms of the workplace accident and injury reduction program; or

247 (C) (I) obtains and relies on:

248 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

249 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
250 (7)(e)(ii); or

251 (Cc) proof that a director or officer is excluded from coverage under Subsection
252 34A-2-104(4);

253 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
254 if the contractor or subcontractor fails to comply with Section 34A-2-201;

255 (III) procures work to be done that is part or process in the trade or business of the
256 eligible employer; and

257 (IV) does the following with regard to a written workplace accident and injury
258 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

259 (Aa) adopts the workplace accident and injury reduction program;

260 (Bb) posts the workplace accident and injury reduction program at the work site at
261 which the eligible employer procures work; and

262 (Cc) enforces the workplace accident and injury reduction program according to the
263 terms of the workplace accident and injury reduction program.

264 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity
265 organized or doing business in the state that is not:

266 (i) an individual;

267 (ii) a corporation; or

268 (iii) publicly traded.

269 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
270 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah
271 Construction Trades Licensing Act, is considered the employer of each member of the
272 unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the
273 unincorporated entity shall provide workers' compensation coverage for the member under this

274 chapter and Chapter 3, Utah Occupational Disease Act.

275 Section 3. Section **34A-5-102** is amended to read:

276 **34A-5-102. Definitions -- Unincorporated entities.**

277 (1) As used in this chapter:

278 ~~[(+)]~~ (a) "Apprenticeship" means a program for the training of apprentices including a
279 program providing the training of those persons defined as apprentices by Section 35A-6-102.

280 ~~[(2)]~~ (b) "Bona fide occupational qualification" means a characteristic applying to an
281 employee:

282 ~~[(a)]~~ (i) that is necessary to the operation; or

283 ~~[(b)]~~ (ii) is the essence of the employee's employer's business.

284 ~~[(3)]~~ (c) "Court" means:

285 ~~[(a)]~~ (i) the district court in the judicial district of the state in which the asserted unfair
286 employment practice occurred; or

287 ~~[(b)]~~ (ii) if this court is not in session at that time, a judge of the court described in

288 Subsection ~~[(3)(a)]~~ (1)(c)(i).

289 ~~[(4)]~~ (d) "Director" means the director of the division.

290 ~~[(5)]~~ (e) "Disability" means a physical or mental disability as defined and covered by
291 the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

292 ~~[(6)]~~ (f) "Division" means the Division of Antidiscrimination and Labor.

293 ~~[(7)]~~ (g) "Employee" means any person applying with or employed by an employer.

294 ~~[(8)(a)]~~ (h) (i) "Employer" means:

295 ~~[(i)]~~ (A) the state;

296 ~~[(ii)]~~ (B) any political subdivision;

297 ~~[(iii)]~~ (C) a board, commission, department, institution, school district, trust, or agent
298 of the state or its political subdivisions; or

299 ~~[(iv)]~~ (D) a person employing 15 or more employees within the state for each working
300 day in each of 20 calendar weeks or more in the current or preceding calendar year.

301 ~~[(b)]~~ (ii) "Employer" does not include:

302 ~~[(i)]~~ (A) a religious organization or association;

303 ~~[(ii)]~~ (B) a religious corporation sole; or

304 ~~[(iii)]~~ (C) any corporation or association constituting a wholly owned subsidiary or

305 agency of any religious organization or association or religious corporation sole.

306 ~~[(9)]~~ (i) "Employment agency" means any person:

307 ~~[(a)]~~ (i) undertaking to procure employees or opportunities to work for any other
308 person; or

309 ~~[(b)]~~ (ii) holding ~~[itself]~~ the person out to be equipped to take an action described in
310 Subsection ~~[(9)(a)]~~ (1)(i)(i).

311 ~~[(10)]~~ (j) "Joint apprenticeship committee" means any association of representatives of
312 a labor organization and an employer providing, coordinating, or controlling an apprentice
313 training program.

314 ~~[(11)]~~ (k) "Labor organization" means any organization that exists for the purpose in
315 whole or in part of:

316 ~~[(a)]~~ (i) collective bargaining;

317 ~~[(b)]~~ (ii) dealing with employers concerning grievances, terms or conditions of
318 employment; or

319 ~~[(c)]~~ (iii) other mutual aid or protection in connection with employment.

320 ~~[(12)]~~ (l) "National origin" means the place of birth, domicile, or residence of an
321 individual or of an individual's ancestors.

322 ~~[(13)]~~ (m) "On-the-job-training" means any program designed to instruct a person who,
323 while learning the particular job for which the person is receiving instruction:

324 ~~[(a)]~~ (i) is also employed at that job; or

325 ~~[(b)]~~ (ii) may be employed by the employer conducting the program during the course
326 of the program, or when the program is completed.

327 ~~[(14)]~~ (n) "Person" means one or more individuals, partnerships, associations,
328 corporations, legal representatives, trusts or trustees, receivers, the state and all political
329 subdivisions and agencies of the state.

330 ~~[(15)]~~ (o) "Presiding officer" means the same as that term is defined in Section
331 63G-4-103.

332 ~~[(16)]~~ (p) "Prohibited employment practice" means a practice specified as
333 discriminatory, and therefore unlawful, in Section 34A-5-106.

334 ~~[(17)]~~ (q) "Retaliate" means the taking of adverse action by an employer, employment
335 agency, labor organization, apprenticeship program, on-the-job training program, or vocational

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."

367 Section 4. Section **34A-6-103** is amended to read:

368 **34A-6-103. Definitions -- Unincorporated entities.**

369 (1) As used in this chapter:

370 [~~(1)~~] (a) "Administrator" means the director of the Division of Occupational Safety and
371 Health.

372 [~~(2)~~] (b) "Amendment" means such modification or change in a code, standard, rule, or
373 order intended for universal or general application.

374 [~~(3)~~] (c) "Commission" means the Labor Commission.

375 [~~(4)~~] (d) "Council" means the Utah Occupational Safety and Health Advisory Council.

376 [~~(5)~~] (e) "Division" means the Division of Occupational Safety and Health.

377 [~~(6)~~] (f) "Employee" includes any person suffered or permitted to work by an employer.

378 [~~(7)~~] (g) "Employer" means:

379 [~~(a)~~] (i) the state;

380 [~~(b) each~~] (ii) a county, city, town, and school district in the state; and

381 [~~(c) every person, firm, and private corporation~~]

382 (iii) a person, including a public [~~utilities~~] utility, having one or more workers or
383 operatives regularly employed in the same business, or in or about the same establishment,
384 under any contract of hire.

385 [~~(8)~~] (h) "Hearing" means a proceeding conducted by the commission.

386 [~~(9)~~] (i) "Imminent danger" means a danger exists which reasonably could be expected
387 to cause an occupational disease, death, or serious physical harm immediately, or before the
388 danger could be eliminated through enforcement procedures under this chapter.

389 [~~(10)~~] (j) "National consensus standard" means any occupational safety and health
390 standard or modification:

391 [~~(a)~~] (i) adopted by a nationally recognized standards-producing organization under
392 procedures where it can be determined by the administrator and division that persons interested
393 and affected by the standard have reached substantial agreement on its adoption;

394 [~~(b)~~] (ii) formulated in a manner which affords an opportunity for diverse views to be
395 considered; and

396 [~~(c)~~] (iii) designated as such a standard by the Secretary of the United States
397 Department of Labor.

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

460 plumber who is learning the plumbing trade under the immediate supervision of a master
461 plumber, residential master plumber, journeyman plumber, or a residential journeyman
462 plumber.

463 (6) "Approved continuing education" means instruction provided through courses
464 under a program established under Subsection 58-55-302.5(2).

465 (7) "Board" means the Electrician Licensing Board, Alarm System Security and
466 Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

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

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

471 (b) the electric control and combustion air supply and venting systems, including air
472 ducts; and

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

474 (9) "Commission" means the Construction Services Commission created under Section
475 58-55-103.

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

477 (a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition
478 to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation
479 or other project, development, or improvement to other than personal property; and

480 (ii) constructing, remodeling, or repairing a manufactured home or mobile home as
481 defined in Section 58-56-3; or

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

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

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

491 (i) a person who builds any structure on [~~his~~] the person's own property for the purpose
492 of sale or who builds any structure intended for public use on [~~his~~] the person's own property;

493 (ii) any person who represents [~~himself to be~~] that the person is a contractor by
494 advertising or any other means;

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

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

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

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

502 (13) (a) "Electrical trade" means the performance of any electrical work involved in the
503 installation, construction, alteration, change, repair, removal, or maintenance of facilities,
504 buildings, or appendages or appurtenances.

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

506 (i) transporting or handling electrical materials;

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

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

510 (c) For purposes of Subsection (13)(b):

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

513 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio
514 permitted by this Subsection (13)(c).

515 (14) "Elevator" has the same meaning as defined in Section 34A-7-202, except that for
516 purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline
517 platform lift.

518 (15) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under
519 this chapter that is engaged in the business of erecting, constructing, installing, altering,
520 servicing, repairing, or maintaining an elevator.

521 (16) "Elevator mechanic" means an individual who is licensed under this chapter as an

522 elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing,
523 repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

524 (17) "Employee" means an individual as defined by the division by rule giving
525 consideration to the definition adopted by the Internal Revenue Service and the Department of
526 Workforce Services.

527 (18) "Engage in a construction trade" means to:

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

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

532 (19) (a) "Financial responsibility" means a demonstration of a current and expected
533 future condition of financial solvency evidencing a reasonable expectation to the division and
534 the board that an applicant or licensee can successfully engage in business as a contractor
535 without jeopardy to the public health, safety, and welfare.

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

539 (20) "Gas appliance" means any device that uses natural gas to produce light, heat,
540 power, steam, hot water, refrigeration, or air conditioning.

541 (21) (a) "General building contractor" means a person licensed under this chapter as a
542 general building contractor qualified by education, training, experience, and knowledge to
543 perform or superintend construction of structures for the support, shelter, and enclosure of
544 persons, animals, chattels, or movable property of any kind or any of the components of that
545 construction except plumbing, electrical work, mechanical work, and manufactured housing
546 installation, for which the general building contractor shall employ the services of a contractor
547 licensed in the particular specialty, except that a general building contractor engaged in the
548 construction of single-family and multifamily residences up to four units may perform the
549 mechanical work and hire a licensed plumber or electrician as an employee.

550 (b) The division may by rule exclude general building contractors from engaging in the
551 performance of other construction specialties in which there is represented a substantial risk to
552 the public health, safety, and welfare, and for which a license is required unless that general

553 building contractor holds a valid license in that specialty classification.

554 (22) (a) "General engineering contractor" means a person licensed under this chapter as
555 a general engineering contractor qualified by education, training, experience, and knowledge to
556 perform construction of fixed works in any of the following: irrigation, drainage, water, power,
557 water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports
558 and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring
559 specialized engineering knowledge and skill, piers, and foundations, or any of the components
560 of those works.

561 (b) A general engineering contractor may not perform construction of structures built
562 primarily for the support, shelter, and enclosure of persons, animals, and chattels.

563 (23) "Immediate supervision" means reasonable direction, oversight, inspection, and
564 evaluation of the work of a person:

565 (a) as the division specifies in rule;

566 (b) by, as applicable, a qualified electrician or plumber;

567 (c) as part of a planned program of training; and

568 (d) to ensure that the end result complies with applicable standards.

569 (24) "Individual" means a natural person.

570 (25) "Journeyman electrician" means a person licensed under this chapter as a
571 journeyman electrician having the qualifications, training, experience, and knowledge to wire,
572 install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

573 (26) "Journeyman plumber" means a person licensed under this chapter as a
574 journeyman plumber having the qualifications, training, experience, and technical knowledge
575 to engage in the plumbing trade.

576 (27) "Master electrician" means a person licensed under this chapter as a master
577 electrician having the qualifications, training, experience, and knowledge to properly plan,
578 layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment
579 for light, heat, power, and other purposes.

580 (28) "Master plumber" means a person licensed under this chapter as a master plumber
581 having the qualifications, training, experience, and knowledge to properly plan and layout
582 projects and supervise persons in the plumbing trade.

583 (29) "Person" means a natural person, sole proprietorship, joint venture, corporation,

584 limited liability company, association, or organization of any type.

585 (30) (a) "Plumbing trade" means the performance of any mechanical work pertaining to
586 the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within
587 three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for:

588 (i) delivery of the water supply;

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

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

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

595 (31) (a) "Ratio of apprentices" means, for the purpose of determining compliance with
596 the requirements for planned programs of training and electrician apprentice licensing
597 applications, the shop ratio of apprentice electricians to journeyman or master electricians shall
598 be one journeyman or master electrician to one apprentice on industrial and commercial work,
599 and one journeyman or master electrician to three apprentices on residential work.

600 (b) On-the-job training shall be under circumstances in which the ratio of apprentices
601 to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to
602 three apprentices to one supervisor on residential projects.

603 (32) "Residential and small commercial contractor" means a person licensed under this
604 chapter as a residential and small commercial contractor qualified by education, training,
605 experience, and knowledge to perform or superintend the construction of single-family
606 residences, multifamily residences up to four units, and commercial construction of not more
607 than three stories above ground and not more than 20,000 square feet, or any of the components
608 of that construction except plumbing, electrical work, mechanical work, and manufactured
609 housing installation, for which the residential and small commercial contractor shall employ
610 the services of a contractor licensed in the particular specialty, except that a residential and
611 small commercial contractor engaged in the construction of single-family and multifamily
612 residences up to four units may perform the mechanical work and hire a licensed plumber or
613 electrician as an employee.

614 (33) "Residential building," as it relates to the license classification of residential

615 journeyman plumber and residential master plumber, means a single or multiple family
616 dwelling of up to four units.

617 (34) "Residential journeyman electrician" means a person licensed under this chapter
618 as a residential journeyman electrician having the qualifications, training, experience, and
619 knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power,
620 and other purposes on buildings using primarily nonmetallic sheath cable.

621 (35) "Residential journeyman plumber" means a person licensed under this chapter as a
622 residential journeyman plumber having the qualifications, training, experience, and knowledge
623 to engage in the plumbing trade as limited to the plumbing of residential buildings.

624 (36) "Residential master electrician" means a person licensed under this chapter as a
625 residential master electrician having the qualifications, training, experience, and knowledge to
626 properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus
627 and equipment for light, heat, power, and other purposes on residential projects.

628 (37) "Residential master plumber" means a person licensed under this chapter as a
629 residential master plumber having the qualifications, training, experience, and knowledge to
630 properly plan and layout projects and supervise persons in the plumbing trade as limited to the
631 plumbing of residential buildings.

632 (38) "Residential project," as it relates to an electrician or electrical contractor, means
633 buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules
634 and regulations governing this work, including the National Electrical Code, and in which the
635 voltage does not exceed 250 volts line to line and 125 volts to ground.

636 (39) (a) "Specialty contractor" means a person licensed under this chapter under a
637 specialty contractor classification established by rule, who is qualified by education, training,
638 experience, and knowledge to perform those construction trades and crafts requiring
639 specialized skill, the regulation of which are determined by the division to be in the best
640 interest of the public health, safety, and welfare.

641 (b) A specialty contractor may perform work in crafts or trades other than those in
642 which ~~he~~ the specialty contractor is licensed if they are incidental to the performance of ~~his~~
643 the specialty contractor's licensed craft or trade.

644 (40) "Unincorporated entity" means an entity that is not:

645 (a) an individual;

646 (b) a corporation; or

647 (c) publicly traded.

648 [~~(40)~~] (41) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

649 [~~(41)~~] (42) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502

650 and as may be further defined by rule.

651 [~~(42)~~] (43) "Wages" means amounts due to an employee for labor or services whether

652 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for

653 calculating the amount.

654 Section 6. Section **58-55-302** is amended to read:

655 **58-55-302. Qualifications for licensure.**

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

657 (a) submit an application prescribed by the division;

658 (b) pay a fee as determined by the department under Section 63J-1-504;

659 (c) (i) meet the examination requirements established by rule by the commission with

660 the concurrence of the director, except for the classifications of apprentice plumber and

661 apprentice electrician for whom no examination is required; or

662 (ii) if required in Section 58-55-304, the individual qualifier must pass the required

663 examination if the applicant is a business entity;

664 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;

665 (e) if an applicant for a contractor's license:

666 (i) produce satisfactory evidence of financial responsibility, except for a construction

667 trades instructor for whom evidence of financial responsibility is not required;

668 (ii) produce satisfactory evidence of knowledge and experience in the construction

669 industry and knowledge of the principles of the conduct of business as a contractor, reasonably

670 necessary for the protection of the public health, safety, and welfare; [~~and~~]

671 (iii) (A) be a licensed master electrician if an applicant for an electrical contractor's

672 license or a licensed master residential electrician if an applicant for a residential electrical

673 contractor's license;

674 [~~(iv)~~] (B) be a licensed master plumber if an applicant for a plumbing contractor's

675 license or a licensed master residential plumber if an applicant for a residential plumbing

676 contractor's license; or

677 [~~(v)~~] (C) be a licensed elevator mechanic and produce satisfactory evidence of three
678 years experience as an elevator mechanic if an applicant for an elevator contractor's license;
679 and

680 (iv) when the applicant is an unincorporated entity, provide a list of the one or more
681 individuals who hold an ownership interest in the applicant as of the day on which the
682 application is filed, that includes for each individual:

683 (A) the individual's name, address, and Social Security number; and

684 (B) whether the individual will engage in a construction trade; and

685 (f) if an applicant for a construction trades instructor license, satisfy any additional
686 requirements established by rule.

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

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

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

695 (c) proof of registration as required by applicable law with the:

696 (i) Utah Department of Commerce;

697 (ii) Division of Corporations and Commercial Code;

698 (iii) Unemployment Insurance Division in the Department of Workforce Services, for
699 purposes of Title 35A, Chapter 4, Employment Security Act;

700 (iv) State Tax Commission; and

701 (v) Internal Revenue Service.

702 (3) In addition to the general requirements for each applicant in Subsection (1),
703 applicants shall comply with the following requirements to be licensed in the following
704 classifications:

705 (a) (i) A master plumber shall produce satisfactory evidence that the applicant:

706 (A) has been a licensed journeyman plumber for at least two years and had two years of
707 supervisory experience as a licensed journeyman plumber in accordance with division rule;

708 (B) has received at least an associate of applied science degree or similar degree
709 following the completion of a course of study approved by the division and had one year of
710 supervisory experience as a licensed journeyman plumber in accordance with division rule; or

711 (C) meets the qualifications determined by the division in collaboration with the board
712 to be equivalent to Subsection (3)(a)(i)(A) or (B).

713 (ii) An individual holding a valid Utah license as a journeyman plumber, based on at
714 least four years of practical experience as a licensed apprentice under the supervision of a
715 licensed journeyman plumber and four years as a licensed journeyman plumber, in effect
716 immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current
717 master plumber license under this chapter, and satisfies the requirements of this Subsection
718 (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

719 (iii) An individual holding a valid plumbing contractor's license or residential
720 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
721 2008:

722 (A) considered to hold a current master plumber license under this chapter if licensed
723 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this
724 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
725 58-55-303; and

726 (B) considered to hold a current residential master plumber license under this chapter if
727 licensed as a residential plumbing contractor and a residential journeyman plumber, and
728 satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of
729 that license under Section 58-55-303.

730 (b) A master residential plumber applicant shall produce satisfactory evidence that the
731 applicant:

732 (i) has been a licensed residential journeyman plumber for at least two years and had
733 two years of supervisory experience as a licensed residential journeyman plumber in
734 accordance with division rule; or

735 (ii) meets the qualifications determined by the division in collaboration with the board
736 to be equivalent to Subsection (3)(b)(i).

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

738 (i) successful completion of the equivalent of at least four years of full-time training

739 and instruction as a licensed apprentice plumber under supervision of a licensed master
740 plumber or journeyman plumber and in accordance with a planned program of training
741 approved by the division;

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

744 (iii) satisfactory evidence of meeting the qualifications determined by the board to be
745 equivalent to Subsection (3)(c)(i) or (c)(ii).

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

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

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

753 (iii) meeting the qualifications determined by the board to be equivalent to Subsection
754 (3)(d)(i) or (d)(ii).

755 (e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be
756 in accordance with the following:

757 (i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be
758 under the immediate supervision of a licensed master plumber, licensed residential master
759 plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

760 (ii) a licensed apprentice plumber in the fourth through tenth year of training may work
761 without supervision for a period not to exceed eight hours in any 24-hour period, but if the
762 apprentice does not become a licensed journeyman plumber or licensed residential journeyman
763 plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer
764 applies.

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

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

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

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

772 (iii) has four years of practical experience as a journeyman electrician; or

773 (iv) meets the qualifications determined by the board to be equivalent to Subsection

774 (3)(f)(i), (ii), or (iii).

775 (g) A master residential electrician applicant shall produce satisfactory evidence that
776 the applicant:

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

778 or

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

781 (h) A journeyman electrician applicant shall produce satisfactory evidence that the
782 applicant:

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

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

788 (iii) meets the qualifications determined by the board to be equivalent to Subsection
789 (3)(h)(i) or (ii).

790 (i) A residential journeyman electrician applicant shall produce satisfactory evidence
791 that the applicant:

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

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

797 (iii) meets the qualifications determined by the division and applicable board to be
798 equivalent to Subsection (3)(i)(i) or (ii).

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

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

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

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

810 (k) An alarm company applicant shall:

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

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

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

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

818 (ii) if a corporation, provide:

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

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

826 (iii) if a limited liability company, provide:

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

831 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards

832 of all individuals owning 5% or more of the equity of the company;

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

837 (v) if a proprietorship, provide the names, addresses, dates of birth, Social Security
838 numbers, and fingerprint cards of the proprietor, and those responsible management personnel
839 employed within the state or having direct responsibility for managing operations of the
840 applicant within the state;

841 (vi) if a trust, provide the names, addresses, dates of birth, Social Security numbers,
842 and fingerprint cards of the trustee, and those responsible management personnel employed
843 within the state or having direct responsibility for managing operations of the applicant within
844 the state;

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

851 (viii) document that none of the applicant's officers, directors, shareholders described
852 in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management
853 personnel have been declared by any court of competent jurisdiction incompetent by reason of
854 mental defect or disease and not been restored;

855 (ix) document that none of the applicant's officers, directors, shareholders described in
856 Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are
857 currently suffering from habitual drunkenness or from drug addiction or dependence;

858 (x) file and maintain with the division evidence of:

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

861 (B) workers' compensation insurance that covers employees of the applicant in
862 accordance with applicable Utah law; and

- 863 (C) registration as is required by applicable law with the:
864 (I) Division of Corporations and Commercial Code;
865 (II) Unemployment Insurance Division in the Department of Workforce Services, for
866 purposes of Title 35A, Chapter 4, Employment Security Act;
867 (III) State Tax Commission; and
868 (IV) Internal Revenue Service; and
869 (xi) meet with the division and board.
- 870 (l) Each applicant for licensure as an alarm company agent shall:
871 (i) submit an application in a form prescribed by the division accompanied by
872 fingerprint cards;
873 (ii) pay a fee determined by the department under Section 63J-1-504;
874 (iii) be of good moral character in that the applicant has not been convicted of a felony,
875 a misdemeanor involving moral turpitude, or any other crime that when considered with the
876 duties and responsibilities of an alarm company agent is considered by the board to indicate
877 that the best interests of the public are served by granting the applicant a license;
878 (iv) not have been declared by any court of competent jurisdiction incompetent by
879 reason of mental defect or disease and not been restored;
880 (v) not be currently suffering from habitual drunkenness or from drug addiction or
881 dependence; and
882 (vi) meet with the division and board if requested by the division or the board.
- 883 (m) (i) Each applicant for licensure as an elevator mechanic shall:
884 (A) provide documentation of experience and education credits of not less than three
885 years work experience in the elevator industry, in construction, maintenance, or service and
886 repair; and
887 (B) satisfactorily complete a written examination administered by the division
888 established by rule under Section 58-1-203; or
889 (C) provide certificates of completion of an apprenticeship program for elevator
890 mechanics, having standards substantially equal to those of this chapter and registered with the
891 United States Department of Labor Bureau Apprenticeship and Training or a state
892 apprenticeship council.
- 893 (ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed

894 elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing,
895 repairing, or maintaining an elevator, the contractor may:

896 (I) notify the division of the unavailability of licensed personnel; and

897 (II) request the division issue a temporary elevator mechanic license to an individual
898 certified by the contractor as having an acceptable combination of documented experience and
899 education to perform the work described in this Subsection (3)(m)(ii)(A).

900 (B) (I) The division may issue a temporary elevator mechanic license to an individual
901 certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by
902 the appropriate fee as determined by the department under Section 63J-1-504.

903 (II) The division shall specify the time period for which the license is valid and may
904 renew the license for an additional time period upon its determination that a shortage of
905 licensed elevator mechanics continues to exist.

906 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
907 division may make rules establishing when Federal Bureau of Investigation records shall be
908 checked for applicants as an alarm company or alarm company agent.

909 (5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and
910 (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
911 Department of Public Safety with the division's request to:

912 (a) conduct a search of records of the Department of Public Safety for criminal history
913 information relating to each applicant for licensure as an alarm company or alarm company
914 agent and each applicant's officers, directors, shareholders described in Subsection
915 (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

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

919 (6) The Department of Public Safety shall send to the division:

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

924 (b) the results of the [F.B.I.] Federal Bureau of Investigation review concerning an

925 applicant in a timely manner after receipt of information from the [F.B.I.] Federal Bureau of
926 Investigation.

927 (7) (a) The division shall charge each applicant for licensure as an alarm company or
928 alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of
929 performing the records reviews under this section.

930 (b) The division shall pay the Department of Public Safety the costs of all records
931 reviews, and the Department of Public Safety shall pay the [F.B.I.] Federal Bureau of
932 Investigation the costs of records reviews under this section.

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

937 (9) (a) An application for licensure under this chapter shall be denied if:

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

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

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

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

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

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

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

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).

987 (c) The division may audit an ownership status report under this Subsection (10):

988 (i) in the same manner as the division may audit a demonstration of financial

989 responsibility under Section 58-55-306; and

990 (ii) to determine compliance with Subsection 58-55-501(24) or (25) or Subsection

991 58-55-502(8) or (9).

992 (11) A Social Security number provided under Subsection (1)(e)(iv) is a private record

993 under Subsection 63G-2-302(1)(h).

994 Section 7. Section **58-55-306** is amended to read:

995 **58-55-306. Financial responsibility.**

996 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or

997 reinstatement of a contractor's license shall demonstrate to the division and the commission the

998 applicant's or licensee's financial responsibility before the issuance of or the renewal or

999 reinstatement of a license by:

1000 (a) (i) completing a questionnaire developed by the division; and

1001 (ii) signing the questionnaire, certifying that the information provided is true and

1002 accurate; or

1003 (b) submitting a bond in an amount and form determined by the commission with the

1004 concurrence of the director.

1005 (2) The division may audit an applicant's or licensee's demonstration of financial

1006 responsibility on a random basis or upon finding of a reasonable need.

1007 (3) The burden to demonstrate financial responsibility is upon the applicant or licensee.

1008 (4) (a) If an applicant for licensure as a contractor or a licensee applying for renewal or

1009 reinstatement of a contractor's license is an unincorporated entity, the division may require each

1010 individual who holds an ownership interest in the applicant or licensee to demonstrate financial

1011 responsibility to the division and the commission.

1012 (b) In accordance with Subsection (2), the division may audit an owner's demonstration

1013 of financial responsibility under Subsection (4)(a) at any time including requesting:

1014 (i) the applicant or licensee to provide a current list of owners meeting the

1015 requirements of Subsection 58-55-302(1)(e)(iv); and

1016 (ii) a credit report for each owner.

1017 (c) If an owner described in Subsection (4)(a) fails to demonstrate financial

1018 responsibility under this section, the division may:

1019 (i) prohibit the licensee from engaging in a construction trade; or

1020 (ii) require the applicant or licensee to submit a bond in an amount and form

1021 determined by the commission with the concurrence of the director.

1022 Section 8. Section **58-55-401** is amended to read:

1023 **58-55-401. Grounds for denial of license and disciplinary proceedings.**

1024 [~~The~~] (1) In accordance with Section 58-1-401, the division may:

1025 (a) refuse to issue a license to an applicant;

1026 (b) refuse to renew the license of a licensee;

1027 (c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund

1028 created by Section 38-11-201;

1029 (d) revoke, suspend, restrict, or place on probation the license of a licensee;

1030 (e) issue a public or private reprimand to a licensee; and

1031 (f) issue a cease and desist orders order[~~, in accordance with Section 58-1-401~~].

1032 (2) In addition to an action taken under Subsection (1), the division may take an action

1033 described in Subsection 58-1-401(2) in relation to a license as a contractor, if:

1034 (a) the applicant or licensee is an unincorporated entity; and

1035 (b) an individual who holds an ownership interest in the applicant or licensee engages

1036 in:

1037 (i) unlawful conduct as described in Section 58-55-501; or

1038 (ii) unprofessional conduct as described in Section 58-55-502.

1039 Section 9. Section **58-55-501** is amended to read:

1040 **58-55-501. Unlawful conduct.**

1041 Unlawful conduct includes:

1042 (1) engaging in a construction trade, acting as a contractor, an alarm business or

1043 company, or an alarm company agent, or representing oneself to be engaged in a construction

1044 trade or to be acting as a contractor in a construction trade requiring licensure, unless the

1045 person doing any of these is appropriately licensed or exempted from licensure under this

1046 chapter;

1047 (2) acting in a construction trade, as an alarm business or company, or as an alarm

1048 company agent beyond the scope of the license held;

1049 (3) hiring or employing in any manner an unlicensed person, other than an employee
1050 for wages who is not required to be licensed under this chapter, to engage in a construction
1051 trade for which licensure is required or to act as a contractor or subcontractor in a construction
1052 trade requiring licensure;

1053 (4) applying for or obtaining a building permit either for oneself or another when not
1054 licensed or exempted from licensure as a contractor under this chapter;

1055 (5) issuing a building permit to any person for whom there is no evidence of a current
1056 license or exemption from licensure as a contractor under this chapter;

1057 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
1058 other person who is required to be licensed under this chapter but who is not licensed or is
1059 otherwise not entitled to obtain or receive the benefit of the building permit;

1060 (7) failing to obtain a building permit when required by law or rule;

1061 (8) submitting a bid for any work for which a license is required under this chapter by a
1062 person not licensed or exempted from licensure as a contractor under this chapter;

1063 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
1064 with an application to obtain or renew a license under this chapter;

1065 (10) allowing one's license to be used by another except as provided by statute or rule;

1066 (11) doing business under a name other than the name appearing on the license, except
1067 as permitted by statute or rule;

1068 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
1069 journeyman plumber, residential journeyman plumber, journeyman electrician, master
1070 electrician, or residential electrician, failing to directly supervise an apprentice under one's
1071 supervision or exceeding the number of apprentices one is allowed to have under [his] the
1072 speciality contractor's supervision;

1073 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
1074 funds in payment for a specific project from an owner or any other person, which funds are to
1075 pay for work performed or materials and services furnished for that specific project, and after
1076 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
1077 amounts due and payable to persons who performed work or furnished materials or services
1078 within a reasonable period of time;

1079 (14) employing an unlicensed alarm business or company or an unlicensed individual

1080 as an alarm company agent, except as permitted under the exemption from licensure provisions
1081 under Section 58-1-307;

1082 (15) if licensed as an alarm company or alarm company agent, filing with the division
1083 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
1084 false or fraudulent and intended to mislead the division in its consideration of the applicant for
1085 licensure;

1086 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

1087 (a) the building or construction laws of this state or any political subdivision;

1088 (b) the safety and labor laws applicable to a project;

1089 (c) any provision of the health laws applicable to a project;

1090 (d) the workers' compensation insurance laws of the state applicable to a project;

1091 (e) the laws governing withholdings for employee state and federal income taxes,
1092 unemployment taxes, ~~[FICA]~~ Social Security payroll taxes, or other required withholdings; or

1093 (f) reporting, notification, and filing laws of this state or the federal government;

1094 (17) aiding or abetting any person in evading the provisions of this chapter or rules
1095 established under the authority of the division to govern this chapter;

1096 (18) engaging in the construction trade or as a contractor for the construction of
1097 residences of up to two units when not currently registered or exempt from registration as a
1098 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
1099 Fund Act;

1100 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
1101 written contract the notification required in Section 38-11-108;

1102 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25;

1103 (21) if licensed as a contractor, not completing the approved continuing education
1104 required under Section 58-55-302.5;

1105 (22) an alarm company allowing an employee with a temporary license under Section
1106 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
1107 license, as provided in Subsection 58-55-312(3)(a)(ii); ~~[and]~~

1108 (23) an alarm company agent under a temporary license under Section 58-55-312
1109 engaging in conduct outside the scope of the temporary license, as provided in Subsection
1110 58-55-312(3)(a)(ii)~~[-];~~

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 ~~10%~~ **8%** ~~10%~~

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

1204 director or the director's designee from within the division shall promptly issue a citation to the
1205 person according to this chapter and any pertinent rules, attempt to negotiate a stipulated
1206 settlement, or notify the person to appear before an adjudicative proceeding conducted under
1207 Title 63G, Chapter 4, Administrative Procedures Act.

1208 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
1209 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), ~~[or] (23), (24), or (25)~~,
1210 or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or
1211 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
1212 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from
1213 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),
1214 ~~[or] (21), (24), or (25)~~, or Subsection 58-55-504(2).

1215 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1216 58-55-401 may not be assessed through a citation.

1217 ~~[(iii) (A) A person who receives a citation or is fined for violating Subsection~~
1218 ~~58-55-501(21) may also be issued a cease and desist order from engaging in work to be~~
1219 ~~performed by a contractor licensed under this chapter unless the person meets the continuing~~
1220 ~~education requirement within 30 days after receipt of the citation or fine.]~~

1221 ~~[(B) The order, if issued, shall be removed upon the person's completion of the~~
1222 ~~continuing education requirement.]~~

1223 ~~[(C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.]~~

1224 (b) (i) ~~[Each]~~ A citation shall be in writing and describe with particularity the nature of
1225 the violation, including a reference to the provision of the chapter, rule, or order alleged to have
1226 been violated.

1227 (ii) ~~[The]~~ A citation shall clearly state that the recipient must notify the division in
1228 writing within 20 calendar days of service of the citation if the recipient wishes to contest the
1229 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1230 (iii) ~~[The]~~ A citation shall clearly explain the consequences of failure to timely contest
1231 the citation or to make payment of any fines assessed by the citation within the time specified
1232 in the citation.

1233 (c) ~~[Each]~~ A citation issued under this section, or a copy of ~~[each]~~ a citation, may be
1234 served upon a person upon whom a summons may be served:

- 1235 (i) in accordance with the Utah Rules of Civil Procedure;
- 1236 (ii) personally or upon the person's agent by a division investigator or by a person
- 1237 specially designated by the director; or
- 1238 (iii) by mail.
- 1239 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
- 1240 citation was issued fails to request a hearing to contest the citation, the citation becomes the
- 1241 final order of the division and is not subject to further agency review.
- 1242 (ii) The period to contest a citation may be extended by the division for cause.
- 1243 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
- 1244 the license of a licensee who fails to comply with a citation after it becomes final.
- 1245 (f) The failure of an applicant for licensure to comply with a citation after it becomes
- 1246 final is a ground for denial of license.
- 1247 (g) ~~[No]~~ A citation may not be issued under this section after the expiration of six
- 1248 months following the occurrence of ~~[any]~~ a violation.
- 1249 (h) ~~[Fines shall be assessed by the]~~ The director or the director's designee ~~[according~~
- 1250 ~~to]~~ shall assess a fine in accordance with the following:
- 1251 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
- 1252 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
- 1253 and
- 1254 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
- 1255 \$2,000 for each day of continued offense.
- 1256 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
- 1257 Subsection (4)(h), an offense constitutes a second or subsequent offense if:
- 1258 (A) the division previously issued a final order determining that a person committed a
- 1259 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
- 1260 (3), (9), (10), (12), (14), ~~[or]~~ (19), (24), or (25), or Subsection 58-55-504(2); or
- 1261 (B) (I) the division initiated an action for a first or second offense;
- 1262 (II) ~~[no]~~ a final order has not been issued by the division in the action initiated under
- 1263 Subsection (4)(i)(i)(B)(I);
- 1264 (III) the division determines during an investigation that occurred after the initiation of
- 1265 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent

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;

- 1297 (d) records received by or generated by or for:
- 1298 (i) the Independent Legislative Ethics Commission, except for:
- 1299 (A) the commission's summary data report that is required under legislative rule; and
- 1300 (B) any other document that is classified as public under legislative rule; or
- 1301 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
- 1302 unless the record is classified as public under legislative rule;
- 1303 (e) records received or generated for a Senate confirmation committee concerning
- 1304 character, professional competence, or physical or mental health of an individual:
- 1305 (i) if prior to the meeting, the chair of the committee determines release of the records:
- 1306 (A) reasonably could be expected to interfere with the investigation undertaken by the
- 1307 committee; or
- 1308 (B) would create a danger of depriving a person of a right to a fair proceeding or
- 1309 impartial hearing; and
- 1310 (ii) after the meeting, if the meeting was closed to the public;
- 1311 (f) employment records concerning a current or former employee of, or applicant for
- 1312 employment with, a governmental entity that would disclose that individual's home address,
- 1313 home telephone number, Social Security number, insurance coverage, marital status, or payroll
- 1314 deductions;
- 1315 (g) records or parts of records under Section 63G-2-303 that a current or former
- 1316 employee identifies as private according to the requirements of that section;
- 1317 (h) that part of a record indicating a person's Social Security number or federal
- 1318 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
- 1319 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 1320 (i) that part of a voter registration record identifying a voter's driver license or
- 1321 identification card number, Social Security number, or last four digits of the Social Security
- 1322 number;
- 1323 (j) a record that:
- 1324 (i) contains information about an individual;
- 1325 (ii) is voluntarily provided by the individual; and
- 1326 (iii) goes into an electronic database that:
- 1327 (A) is designated by and administered under the authority of the Chief Information

1328 Officer; and

1329 (B) acts as a repository of information about the individual that can be electronically
1330 retrieved and used to facilitate the individual's online interaction with a state agency;

1331 (k) information provided to the Commissioner of Insurance under:

1332 (i) Subsection 31A-23a-115(2)(a);

1333 (ii) Subsection 31A-23a-302(3); or

1334 (iii) Subsection 31A-26-210(3);

1335 (l) information obtained through a criminal background check under Title 11, Chapter
1336 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

1337 (m) information provided by an offender that is:

1338 (i) required by the registration requirements of Section 77-27-21.5; and

1339 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);

1340 and

1341 (n) a statement and any supporting documentation filed with the attorney general in
1342 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
1343 homeland security.

1344 (2) The following records are private if properly classified by a governmental entity:

1345 (a) records concerning a current or former employee of, or applicant for employment
1346 with a governmental entity, including performance evaluations and personal status information
1347 such as race, religion, or disabilities, but not including records that are public under Subsection
1348 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

1349 (b) records describing an individual's finances, except that the following are public:

1350 (i) records described in Subsection 63G-2-301(2);

1351 (ii) information provided to the governmental entity for the purpose of complying with
1352 a financial assurance requirement; or

1353 (iii) records that must be disclosed in accordance with another statute;

1354 (c) records of independent state agencies if the disclosure of those records would
1355 conflict with the fiduciary obligations of the agency;

1356 (d) other records containing data on individuals the disclosure of which constitutes a
1357 clearly unwarranted invasion of personal privacy;

1358 (e) records provided by the United States or by a government entity outside the state

1359 that are given with the requirement that the records be managed as private records, if the
1360 providing entity states in writing that the record would not be subject to public disclosure if
1361 retained by it; and

1362 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
1363 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
1364 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

1365 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
1366 records, statements, history, diagnosis, condition, treatment, and evaluation.

1367 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
1368 doctors, or affiliated entities are not private records or controlled records under Section
1369 63G-2-304 when the records are sought:

1370 (i) in connection with any legal or administrative proceeding in which the patient's
1371 physical, mental, or emotional condition is an element of any claim or defense; or

1372 (ii) after a patient's death, in any legal or administrative proceeding in which any party
1373 relies upon the condition as an element of the claim or defense.

1374 (c) Medical records are subject to production in a legal or administrative proceeding
1375 according to state or federal statutes or rules of procedure and evidence as if the medical
1376 records were in the possession of a nongovernmental medical care provider.

1377 Section 13. Section **63G-11-104** is amended to read:

1378 **63G-11-104. Receipt of state, local, or federal public benefits -- Verification --**
1379 **Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

1380 (1) As used in this section, "federal program" means the Systematic Alien Verification
1381 for Entitlements Program operated by the United States Department of Homeland Security or
1382 an equivalent program designated by the Department of Homeland Security.

1383 (2) (a) Except as provided in Subsection (4) or when exempted by federal law, an
1384 agency or political subdivision of the state shall verify the lawful presence in the United States
1385 of an individual at least 18 years of age who applies for:

1386 ~~(a)~~ (i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

1387 ~~(b)~~ (ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered
1388 by an agency or political subdivision of this state.

1389 (b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction

1390 Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of
1391 Commerce shall verify in accordance with this Subsection (2) the lawful presence in the United
1392 States of each individual who:

1393 (i) owns an interest in the contractor that is an unincorporated entity; and
1394 (ii) engages, or will engage, in a construction trade in Utah as an owner of the
1395 contractor described in Subsection (2)(b)(i).

1396 (3) This section shall be enforced without regard to race, religion, gender, ethnicity, or
1397 national origin.

1398 (4) Verification of lawful presence under this section is not required for:

1399 (a) any purpose for which lawful presence in the United States is not restricted by law,
1400 ordinance, or regulation;

1401 (b) assistance for health care items and services that:

1402 (i) are necessary for the treatment of an emergency medical condition, as defined in 42
1403 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

1404 (ii) are not related to an organ transplant procedure;

1405 (c) short-term, noncash, in-kind emergency disaster relief;

1406 (d) public health assistance for immunizations with respect to immunizable diseases
1407 and for testing and treatment of symptoms of communicable diseases whether or not the
1408 symptoms are caused by the communicable disease;

1409 (e) programs, services, or assistance such as soup kitchens, crisis counseling and
1410 intervention, and short-term shelter, specified by the United States Attorney General, in the
1411 sole and unreviewable discretion of the United States Attorney General after consultation with
1412 appropriate federal agencies and departments, that:

1413 (i) deliver in-kind services at the community level, including through public or private
1414 nonprofit agencies;

1415 (ii) do not condition the provision of assistance, the amount of assistance provided, or
1416 the cost of assistance provided on the income or resources of the individual recipient; and

1417 (iii) are necessary for the protection of life or safety;

1418 (f) the exemption for paying the nonresident portion of total tuition as set forth in
1419 Section 53B-8-106;

1420 (g) an applicant for a license under Section 61-1-4, if the applicant:

- 1421 (i) is registered with the Financial Industry Regulatory Authority; and
1422 (ii) files an application with the state Division of Securities through the Central
1423 Registration Depository;
- 1424 (h) a state public benefit to be given to an individual under Title 49, Utah State
1425 Retirement and Insurance Benefit Act;
- 1426 (i) a home loan that will be insured, guaranteed, or purchased by:
1427 (i) the Federal Housing Administration, the Veterans Administration, or any other
1428 federal agency; or
1429 (ii) an enterprise as defined in 12 U.S.C. Sec. 4502;
- 1430 (j) a subordinate loan or a grant that will be made to an applicant in connection with a
1431 home loan that does not require verification under Subsection (4)(i); and
1432 (k) an applicant for a license issued by the Department of Commerce or individual
1433 described in Subsection (2)(b), if the applicant or individual provides the Department of
1434 Commerce:
- 1435 (i) certification, under penalty of perjury, that the applicant or individual is:
1436 (A) a United States citizen;
1437 (B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or
1438 (C) lawfully present in the United States; and
1439 [~~(ii) a valid driver license number for a driver license issued by:~~]
1440 [~~(A) Utah; or~~]
1441 (ii) the number for a driver license or identification card issued:
1442 (A) under Title 53, Chapter 3, Uniform Driver License Act; or
1443 (B) by a state other than Utah that as part of issuing the driver license or identification
1444 card verifies an individual's lawful presence in the United States.
- 1445 (5) An agency or political subdivision required to verify the lawful presence in the
1446 United States of an applicant under this section shall require the applicant to certify under
1447 penalty of perjury that:
- 1448 (a) the applicant is a United States citizen; or
1449 (b) the applicant is:
1450 (i) a qualified alien as defined in 8 U.S.C. Sec. 1641; and
1451 (ii) lawfully present in the United States.

1452 (6) An agency or political subdivision shall verify a certification required under
1453 Subsection (5)(b) through the federal program.

1454 (7) (a) An individual who knowingly and willfully makes a false, fictitious, or
1455 fraudulent statement or representation in a certification under Subsection (4)(k) or (5) is subject
1456 to the criminal penalties applicable in this state for:

1457 (i) making a written false statement under Subsection 76-8-504(2); and

1458 (ii) fraudulently obtaining:

1459 (A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

1460 (B) unemployment compensation under Section 76-8-1301.

1461 (b) If the certification constitutes a false claim of United States citizenship under 18
1462 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United
1463 States Attorney General for the applicable district based upon the venue in which the
1464 application was made.

1465 (8) An agency or political subdivision may adopt variations to the requirements of this
1466 section that:

1467 (a) clearly improve the efficiency of or reduce delay in the verification process; or

1468 (b) provide for adjudication of unique individual circumstances where the verification
1469 procedures in this section would impose an unusual hardship on a legal resident of Utah.

1470 (9) It is unlawful for an agency or a political subdivision of this state to provide a state,
1471 local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.

1472 (10) A state agency or department that administers a program of state or local public
1473 benefits shall:

1474 (a) provide an annual report to the governor, the president of the Senate, and the
1475 speaker of the House regarding its compliance with this section; and

1476 (b) (i) monitor the federal program for application verification errors and significant
1477 delays;

1478 (ii) provide an annual report on the errors and delays to ensure that the application of
1479 the federal program is not erroneously denying a state or local benefit to a legal resident of the
1480 state; and

1481 (iii) report delays and errors in the federal program to the United States Department of
1482 Homeland Security.

1483 Section 14. **Effective date.**
1484 This bill takes effect on July 1, 2011.

FISCAL NOTE

S.B. 35 1st Sub. (Green)

SHORT TITLE: Construction Licensees Related Amendments

SPONSOR: Mayne, K.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this legislation would require certain construction owners to file an ownership status report. Initial filings in the first year would generate approximately \$100,000 in revenue, with \$20,000 in revenue in subsequent years. Audit and filing expenses for the Department of Commerce would match the revenue generated. The Labor Commission could experience some increase in case filings as a result of this legislation, but costs associated with this increase are expected to be minimal.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Commerce Service Fund	\$0	\$20,000	\$20,000
Commerce Service, One-time	\$0	\$80,000	\$0
Total Revenue	\$0	\$100,000	\$20,000
Expenditure:			
Commerce Service Fund	\$0	\$20,000	\$20,000
Commerce Service, One-time	\$0	\$80,000	\$0
Total Expenditure	\$0	\$100,000	\$20,000
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	\$0
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

An estimated 5,000 construction owners (businesses or individuals) specified in this legislation would be required to pay an initial filing fee of \$20.00. In the event of an ownership change, a re-filing fee would be required. These owners would also need to secure a credit report to submit when filing. If the specified entities are not currently providing workers' compensation, they would also incur the costs associated with this coverage.