

1 **CONSTRUCTION LICENSEES RELATED AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Todd E. Kiser

6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 This bill provides an immediate effective date.

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

44

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.**

48 (1) As used in this chapter:

49 ~~[(+)]~~ (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 ~~[aH]~~ 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 member of 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 a member by establishing by clear and convincing evidence that the
68 member:

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

70 (ii) holds at least a 20% ownership interest in the unincorporated entity; or

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

72 (A) the unincorporated entity; or

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

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

75 (i) "active manager";

76 (ii) "20% ownership interest"; and

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

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

79 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
80 **Statutory employers.**

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

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

88 (2) (a) Except as provided in Subsection (4), each person, including each public utility
89 and each independent contractor, who regularly employs one or more workers or operatives in

90 the same business, or in or about the same establishment, under any contract of hire, express or
91 implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah
92 Occupational Disease Act.

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

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

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

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

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

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

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

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

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

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

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

112 (4) A domestic employer who does not employ one employee or more than one
113 employee at least 40 hours per week is not considered an employer under this chapter and
114 Chapter 3, Utah Occupational Disease Act.

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

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

119 (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
120 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural

121 employer is a corporation, partnership, or other business entity, "agricultural employer" means
122 an officer, director, or partner of the business entity;

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

124 (A) an agricultural employer's:

125 (I) spouse;

126 (II) grandparent;

127 (III) parent;

128 (IV) sibling;

129 (V) child;

130 (VI) grandchild;

131 (VII) nephew; or

132 (VIII) niece;

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

134 (C) an individual who is similar to those listed in Subsections (5)(a)(ii)(A) or (B) as

135 defined by rules of the commission; and

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

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

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

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

145 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
146 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
147 \$50,000; and

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

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

151 (II) \$5,000 for health care benefits similar to benefits under health care insurance as

152 defined in Section 31A-1-301.

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

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

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

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

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

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

165 (b) the rules of the commission.

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

169 (A) a sole proprietorship;

170 (B) a corporation;

171 (C) a partnership;

172 (D) a limited liability company; or

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

174 (ii) If an employer procures any work to be done wholly or in part for the employer by
175 a contractor over whose work the employer retains supervision or control, and this work is a
176 part or process in the trade or business of the employer, the contractor, all persons employed by
177 the contractor, all subcontractors under the contractor, and all persons employed by any of
178 these subcontractors, are considered employees of the original employer for the purposes of
179 this chapter and Chapter 3, Utah Occupational Disease Act.

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

183 (7)(a).

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

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

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

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

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

198 (d) A director or officer of a corporation is not considered an employee under
199 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
200 34A-2-104(4).

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

204 (i) a valid certification of the contractor's or subcontractor's compliance with Section
205 34A-2-201; or

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

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

212 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
213 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah

214 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
215 proprietorship's enterprise under a contract of hire for services.

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

217 (A) is an employer; and

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

220 (I) all persons employed by the contractor;

221 (II) all subcontractors under the contractor; and

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

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

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

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

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

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

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

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

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

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

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

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

244 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or

245 (7)(e)(ii); or

246 (Cc) proof that a director or officer is excluded from coverage under Subsection
247 34A-2-104(4);

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

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

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

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

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

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

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

261 (i) an individual;

262 (ii) a corporation; or

263 (iii) publicly traded.

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

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

271 **34A-5-102. Definitions.**

272 (1) As used in this chapter:

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

275 ~~[(2)]~~ (b) "Bona fide occupational qualification" means a characteristic applying to an

276 employee:

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

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

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

280 ~~[(a)]~~ (i) the district court in the judicial district of the state in which the asserted unfair

281 employment practice occurred; or

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

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

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

285 ~~[(5)]~~ (e) "Disability" means a physical or mental disability as defined and covered by

286 the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

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

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

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

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

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

292 ~~[(iii)]~~ (C) a board, commission, department, institution, school district, trust, or agent

293 of the state or its political subdivisions; or

294 ~~[(iv)]~~ (D) a person employing 15 or more employees within the state for each working

295 day in each of 20 calendar weeks or more in the current or preceding calendar year.

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

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

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

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

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

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

302 ~~[(a)]~~ (i) undertaking to procure employees or opportunities to work for any other

303 person; or

304 ~~[(b)]~~ (ii) holding ~~[itself]~~ the person out to be equipped to take an action described in

305 Subsection ~~[(9)(a)]~~ (1)(i)(i).

306 ~~[(10)]~~ (j) "Joint apprenticeship committee" means any association of representatives of

307 a labor organization and an employer providing, coordinating, or controlling an apprentice
308 training program.

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

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

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

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

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

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

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

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

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

325 ~~[(15)]~~ (o) "Presiding officer" means the same as that term is defined in Section
326 63G-4-103.

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

329 ~~[(17)]~~ (q) "Retaliate" means the taking of adverse action by an employer, employment
330 agency, labor organization, apprenticeship program, on-the-job training program, or vocational
331 school against one of its employees, applicants, or members because the employee, applicant,
332 or member:

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

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

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

338 (i) an individual;

339 (ii) a corporation; or

340 (iii) publicly traded.

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

345 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
346 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
347 be the employer of each member of the unincorporated entity.

348 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
349 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
350 under Subsection (2)(a) for a member by establishing by clear and convincing evidence that the
351 member:

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

353 (ii) holds at least a 20% ownership interest in the unincorporated entity; or

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

355 (A) the unincorporated entity; or

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

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

358 (i) "active manager";

359 (ii) "20% ownership interest"; and

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

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

362 **34A-6-103. Definitions.**

363 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

376 (iii) a person, including a public ~~[utilities]~~ utility, having one or more workers or

377 operatives regularly employed in the same business, or in or about the same establishment,

378 under any contract of hire.

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

380 ~~[(9)]~~ (i) "Imminent danger" means a danger exists which reasonably could be expected

381 to cause an occupational disease, death, or serious physical harm immediately, or before the

382 danger could be eliminated through enforcement procedures under this chapter.

383 ~~[(10)]~~ (j) "National consensus standard" means any occupational safety and health

384 standard or modification:

385 ~~[(a)]~~ (i) adopted by a nationally recognized standards-producing organization under

386 procedures where it can be determined by the administrator and division that persons interested

387 and affected by the standard have reached substantial agreement on its adoption;

388 ~~[(b)]~~ (ii) formulated in a manner which affords an opportunity for diverse views to be

389 considered; and

390 ~~[(c)]~~ (iii) designated as such a standard by the Secretary of the United States

391 Department of Labor.

392 ~~[(11)]~~ (k) "Person" means the general public, one or more individuals, partnerships,

393 associations, corporations, legal representatives, trustees, receivers, and the state and its

394 political subdivisions.

395 ~~[(12)]~~ (l) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah

396 Administrative Rulemaking Act.

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

398 ~~[(14)]~~ (n) "Standard" means an occupational health and safety standard or group of

399 standards which requires conditions, or the adoption or use of one or more practices, means,

400 methods, operations, or processes, reasonably necessary to provide safety and healthful
401 employment and places of employment.

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

404 (i) an individual;

405 (ii) a corporation; or

406 (iii) publicly traded.

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

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

411 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
412 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
413 be the employer of each member of the unincorporated entity.

414 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
415 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
416 under Subsection (2)(a) for a member by establishing by clear and convincing evidence that the
417 member:

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

419 (ii) holds at least a 20% ownership interest in the unincorporated entity; or

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

421 (A) the unincorporated entity; or

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

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

424 (i) "active manager";

425 (ii) "20% ownership interest"; and

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

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

428 **58-55-102. Definitions.**

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

430 (1) (a) "Alarm business or company" means a person engaged in the sale, installation,

431 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system,
432 except as provided in Subsection (1)(b).

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

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

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

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

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

445 (a) detecting and signaling unauthorized intrusion or entry into or onto certain
446 premises; or

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

448 (4) "Apprentice electrician" means a person licensed under this chapter as an
449 apprentice electrician who is learning the electrical trade under the immediate supervision of a
450 master electrician, residential master electrician, a journeyman electrician, or a residential
451 journeyman electrician.

452 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice
453 plumber who is learning the plumbing trade under the immediate supervision of a master
454 plumber, residential master plumber, journeyman plumber, or a residential journeyman
455 plumber.

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

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

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

461 (a) piping and components with a means for conveying, either continuously or

462 intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the
463 appliance;

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

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

467 (9) "Commission" means the Construction Services Commission created under Section
468 58-55-103.

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

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

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

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

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

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

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

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

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

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

492 (v) a construction manager who performs management and counseling services on a

493 construction project for a fee.

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

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

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

499 (i) transporting or handling electrical materials;

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

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

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

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

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

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

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

514 (16) "Elevator mechanic" means an individual who is licensed under this chapter as an
515 elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing,
516 repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

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

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

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

523 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person

524 to believe one is or will act as a contractor.

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

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

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

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

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

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

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

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

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

558 (a) as the division specifies in rule;

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

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

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

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

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

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

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

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

576 (29) "Person" means a natural person, sole proprietorship, joint venture, corporation,
577 limited liability company, association, or organization of any type.

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

581 (i) delivery of the water supply;

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

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

584 (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes,
585 fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof drains

586 together with their devices, appurtenances, and connections where installed within the outside
587 walls of the building.

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

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

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

607 (33) "Residential building," as it relates to the license classification of residential
608 journeyman plumber and residential master plumber, means a single or multiple family
609 dwelling of up to four units.

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

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

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

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

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

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

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

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

638 (a) an individual;

639 (b) a corporation; or

640 (c) publicly traded.

641 ~~[(40)]~~ (41) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

642 ~~[(41)]~~ (42) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502
643 and as may be further defined by rule.

644 ~~[(42)]~~ (43) "Wages" means amounts due to an employee for labor or services whether
645 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for
646 calculating the amount.

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

648 **58-55-302. Qualifications for licensure.**

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

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

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

652 (c) (i) meet the examination requirements established by rule by the commission with
653 the concurrence of the director, except for the classifications of apprentice plumber and
654 apprentice electrician for whom no examination is required; or655 (ii) if required in Section 58-55-304, the individual qualifier must pass the required
656 examination if the applicant is a business entity;

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

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

659 (i) produce satisfactory evidence of financial responsibility, except for a construction
660 trades instructor for whom evidence of financial responsibility is not required;661 (ii) produce satisfactory evidence of knowledge and experience in the construction
662 industry and knowledge of the principles of the conduct of business as a contractor, reasonably
663 necessary for the protection of the public health, safety, and welfare; [~~and~~]664 (iii) (A) be a licensed master electrician if an applicant for an electrical contractor's
665 license or a licensed master residential electrician if an applicant for a residential electrical
666 contractor's license;667 [~~(iv)~~] (B) be a licensed master plumber if an applicant for a plumbing contractor's
668 license or a licensed master residential plumber if an applicant for a residential plumbing
669 contractor's license; or670 [~~(v)~~] (C) be a licensed elevator mechanic and produce satisfactory evidence of three
671 years experience as an elevator mechanic if an applicant for an elevator contractor's license;
672 and673 (iv) when the applicant is an unincorporated entity, provide a list of the one or more
674 individuals who hold an ownership interest in the applicant, except through an employee stock
675 option plan or its equivalent, as of the day on which the application is filed, that includes for
676 each individual:677 (A) the individual's name, address, and Social Security number; and678 (B) whether the individual will engage in a construction trade; and

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

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

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

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

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

690 (i) Utah Department of Commerce;

691 (ii) Division of Corporations and Commercial Code;

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

694 (iv) State Tax Commission; and

695 (v) Internal Revenue Service.

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

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

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

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

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

707 (ii) An individual holding a valid Utah license as a journeyman plumber, based on at
708 least four years of practical experience as a licensed apprentice under the supervision of a
709 licensed journeyman plumber and four years as a licensed journeyman plumber, in effect

710 immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current
711 master plumber license under this chapter, and satisfies the requirements of this Subsection
712 (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

713 (iii) An individual holding a valid plumbing contractor's license or residential
714 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
715 2008:

716 (A) considered to hold a current master plumber license under this chapter if licensed
717 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this
718 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
719 58-55-303; and

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

724 (b) A master residential plumber applicant shall produce satisfactory evidence that the
725 applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

763 (ii) is a graduate of an electrical trade school, having received an associate of applied
764 sciences degree following successful completion of a course of study approved by the division,
765 and has two years of practical experience as a licensed journeyman electrician;

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

767 (iv) meets the qualifications determined by the board to be equivalent to Subsection
768 (3)(f)(i), (ii), or (iii).

769 (g) A master residential electrician applicant shall produce satisfactory evidence that
770 the applicant:

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

772 or

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

775 (h) A journeyman electrician applicant shall produce satisfactory evidence that the
776 applicant:

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

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

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

784 (i) A residential journeyman electrician applicant shall produce satisfactory evidence
785 that the applicant:

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

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

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

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

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

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

802 (iii) A licensed master or journeyman electrician may have under immediate

803 supervision on nonresidential projects only one licensed apprentice electrician.

804 (k) An alarm company applicant shall:

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

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

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

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

812 (ii) if a corporation, provide:

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

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

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

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

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

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

831 (v) if a proprietorship, provide the names, addresses, dates of birth, Social Security
832 numbers, and fingerprint cards of the proprietor, and those responsible management personnel
833 employed within the state or having direct responsibility for managing operations of the

834 applicant within the state;

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

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

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

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

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

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

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

857 (C) registration as is required by applicable law with the:

858 (I) Division of Corporations and Commercial Code;

859 (II) Unemployment Insurance Division in the Department of Workforce Services, for
860 purposes of Title 35A, Chapter 4, Employment Security Act;

861 (III) State Tax Commission; and

862 (IV) Internal Revenue Service; and

863 (xi) meet with the division and board.

864 (l) Each applicant for licensure as an alarm company agent shall:

- 865 (i) submit an application in a form prescribed by the division accompanied by
866 fingerprint cards;
- 867 (ii) pay a fee determined by the department under Section 63J-1-504;
- 868 (iii) be of good moral character in that the applicant has not been convicted of a felony,
869 a misdemeanor involving moral turpitude, or any other crime that when considered with the
870 duties and responsibilities of an alarm company agent is considered by the board to indicate
871 that the best interests of the public are served by granting the applicant a license;
- 872 (iv) not have been declared by any court of competent jurisdiction incompetent by
873 reason of mental defect or disease and not been restored;
- 874 (v) not be currently suffering from habitual drunkenness or from drug addiction or
875 dependence; and
- 876 (vi) meet with the division and board if requested by the division or the board.
- 877 (m) (i) Each applicant for licensure as an elevator mechanic shall:
- 878 (A) provide documentation of experience and education credits of not less than three
879 years work experience in the elevator industry, in construction, maintenance, or service and
880 repair; and
- 881 (B) satisfactorily complete a written examination administered by the division
882 established by rule under Section 58-1-203; or
- 883 (C) provide certificates of completion of an apprenticeship program for elevator
884 mechanics, having standards substantially equal to those of this chapter and registered with the
885 United States Department of Labor Bureau Apprenticeship and Training or a state
886 apprenticeship council.
- 887 (ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed
888 elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing,
889 repairing, or maintaining an elevator, the contractor may:
- 890 (I) notify the division of the unavailability of licensed personnel; and
- 891 (II) request the division issue a temporary elevator mechanic license to an individual
892 certified by the contractor as having an acceptable combination of documented experience and
893 education to perform the work described in this Subsection (3)(m)(ii)(A).
- 894 (B) (I) The division may issue a temporary elevator mechanic license to an individual
895 certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by

896 the appropriate fee as determined by the department under Section 63J-1-504.

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

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

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

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

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

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

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

918 (b) the results of the [F.B.I.] Federal Bureau of Investigation review concerning an
919 applicant in a timely manner after receipt of information from the [F.B.I.] Federal Bureau of
920 Investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

965 (i) owns an interest in the contractor that is an unincorporated entity, except an interest
966 held by an employee under an employee stock option plan or its equivalent;

967 (ii) owns less than a 20% interest in the unincorporated entity, as defined by rule made
968 by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
969 and

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

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

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

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

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

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

980 (iii) be accompanied by a fee set by the division in accordance with Section 63J-1-504.

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

982 (i) in the same manner as the division may audit a demonstration of financial
983 responsibility under Section 58-55-306; and

984 (ii) to determine compliance with Subsection 58-55-501(24) or (25) or Subsection
985 58-55-502(8) or (9).

986 (11) A Social Security number provided under Subsection (1)(e)(iv) is a private record
987 under Subsection 63G-2-302(1)(h).

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

989 **58-55-306. Financial responsibility.**

990 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or
991 reinstatement of a contractor's license shall demonstrate to the division and the commission the
992 applicant's or licensee's financial responsibility before the issuance of or the renewal or
993 reinstatement of a license by:

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

995 (ii) signing the questionnaire, certifying that the information provided is true and
996 accurate; or

997 (b) submitting a bond in an amount and form determined by the commission with the
998 concurrence of the director.

999 (2) The division may audit an applicant's or licensee's demonstration of financial
1000 responsibility on a random basis or upon finding of a reasonable need.

1001 (3) The burden to demonstrate financial responsibility is upon the applicant or licensee.

1002 (4) (a) If an applicant for licensure as a contractor or a licensee applying for renewal or
1003 reinstatement of a contractor's license is an unincorporated entity, the division may require each
1004 individual who holds an ownership interest in the applicant or licensee, except through an
1005 employee stock option plan or its equivalent, to demonstrate financial responsibility to the
1006 division and the commission.

1007 (b) In accordance with Subsection (2), the division may audit an owner's demonstration
1008 of financial responsibility under Subsection (4)(a) at any time including requesting:

1009 (i) the applicant or licensee to provide a current list of owners meeting the
1010 requirements of Subsection 58-55-302(1)(e)(iv); and

1011 (ii) a credit report for each owner.

1012 (c) If an owner described in Subsection (4)(a) fails to demonstrate financial
1013 responsibility under this section, the division may:

1014 (i) prohibit the licensee from engaging in a construction trade; or

1015 (ii) require the applicant or licensee to submit a bond in an amount and form
1016 determined by the commission with the concurrence of the director.

1017 Section 8. Section **58-55-401** is amended to read:

1018 **58-55-401. Grounds for denial of license and disciplinary proceedings.**

1019 ~~[The]~~ (1) In accordance with Section 58-1-401, the division may:

- 1020 (a) refuse to issue a license to an applicant;
- 1021 (b) refuse to renew the license of a licensee;
- 1022 (c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund
- 1023 created by Section 38-11-201;
- 1024 (d) revoke, suspend, restrict, or place on probation the license of a licensee;
- 1025 (e) issue a public or private reprimand to a licensee; and
- 1026 (f) issue a cease and desist orders order[, ~~in accordance with Section 58-1-401~~].
- 1027 (2) In addition to an action taken under Subsection (1), the division may take an action
- 1028 described in Subsection 58-1-401(2) in relation to a license as a contractor, if:
- 1029 (a) the applicant or licensee is an unincorporated entity; and
- 1030 (b) an individual who holds an ownership interest in the applicant or licensee engages
- 1031 in:
- 1032 (i) unlawful conduct as described in Section 58-55-501; or
- 1033 (ii) unprofessional conduct as described in Section 58-55-502.
- 1034 Section 9. Section **58-55-501** is amended to read:
- 1035 **58-55-501. Unlawful conduct.**
- 1036 Unlawful conduct includes:
- 1037 (1) engaging in a construction trade, acting as a contractor, an alarm business or
- 1038 company, or an alarm company agent, or representing oneself to be engaged in a construction
- 1039 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
- 1040 person doing any of these is appropriately licensed or exempted from licensure under this
- 1041 chapter;
- 1042 (2) acting in a construction trade, as an alarm business or company, or as an alarm
- 1043 company agent beyond the scope of the license held;
- 1044 (3) hiring or employing in any manner an unlicensed person, other than an employee
- 1045 for wages who is not required to be licensed under this chapter, to engage in a construction
- 1046 trade for which licensure is required or to act as a contractor or subcontractor in a construction
- 1047 trade requiring licensure;
- 1048 (4) applying for or obtaining a building permit either for oneself or another when not
- 1049 licensed or exempted from licensure as a contractor under this chapter;
- 1050 (5) issuing a building permit to any person for whom there is no evidence of a current

- 1051 license or exemption from licensure as a contractor under this chapter;
- 1052 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
- 1053 other person who is required to be licensed under this chapter but who is not licensed or is
- 1054 otherwise not entitled to obtain or receive the benefit of the building permit;
- 1055 (7) failing to obtain a building permit when required by law or rule;
- 1056 (8) submitting a bid for any work for which a license is required under this chapter by a
- 1057 person not licensed or exempted from licensure as a contractor under this chapter;
- 1058 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
- 1059 with an application to obtain or renew a license under this chapter;
- 1060 (10) allowing one's license to be used by another except as provided by statute or rule;
- 1061 (11) doing business under a name other than the name appearing on the license, except
- 1062 as permitted by statute or rule;
- 1063 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
- 1064 journeyman plumber, residential journeyman plumber, journeyman electrician, master
- 1065 electrician, or residential electrician, failing to directly supervise an apprentice under one's
- 1066 supervision or exceeding the number of apprentices one is allowed to have under ~~his~~ the
- 1067 speciality contractor's supervision;
- 1068 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
- 1069 funds in payment for a specific project from an owner or any other person, which funds are to
- 1070 pay for work performed or materials and services furnished for that specific project, and after
- 1071 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
- 1072 amounts due and payable to persons who performed work or furnished materials or services
- 1073 within a reasonable period of time;
- 1074 (14) employing an unlicensed alarm business or company or an unlicensed individual
- 1075 as an alarm company agent, except as permitted under the exemption from licensure provisions
- 1076 under Section 58-1-307;
- 1077 (15) if licensed as an alarm company or alarm company agent, filing with the division
- 1078 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
- 1079 false or fraudulent and intended to mislead the division in its consideration of the applicant for
- 1080 licensure;
- 1081 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

- 1082 (a) the building or construction laws of this state or any political subdivision;
- 1083 (b) the safety and labor laws applicable to a project;
- 1084 (c) any provision of the health laws applicable to a project;
- 1085 (d) the workers' compensation insurance laws of the state applicable to a project;
- 1086 (e) the laws governing withholdings for employee state and federal income taxes,
- 1087 unemployment taxes, ~~FICA~~ Social Security payroll taxes, or other required withholdings; or
- 1088 (f) reporting, notification, and filing laws of this state or the federal government;
- 1089 (17) aiding or abetting any person in evading the provisions of this chapter or rules
- 1090 established under the authority of the division to govern this chapter;
- 1091 (18) engaging in the construction trade or as a contractor for the construction of
- 1092 residences of up to two units when not currently registered or exempt from registration as a
- 1093 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
- 1094 Fund Act;
- 1095 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
- 1096 written contract the notification required in Section 38-11-108;
- 1097 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25;
- 1098 (21) if licensed as a contractor, not completing the approved continuing education
- 1099 required under Section 58-55-302.5;
- 1100 (22) an alarm company allowing an employee with a temporary license under Section
- 1101 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
- 1102 license, as provided in Subsection 58-55-312(3)(a)(ii); ~~and~~
- 1103 (23) an alarm company agent under a temporary license under Section 58-55-312
- 1104 engaging in conduct outside the scope of the temporary license, as provided in Subsection
- 1105 58-55-312(3)(a)(ii)~~;~~;
- 1106 (24) an individual who owns an interest in an unincorporated entity, except an interest
- 1107 held by an employee under an employee stock option plan or its equivalent, engaging in a
- 1108 construction trade in Utah while not lawfully present in the United States; or
- 1109 (25) an unincorporated entity failing to provide the following for an individual who
- 1110 owns less than a 20% interest in the unincorporated entity, as defined by rule made by the
- 1111 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except
- 1112 an interest held by an employee under an employee stock option plan or its equivalent, if the

1113 individual engages, or will engage, in a construction trade in Utah for the unincorporated
1114 entity:

1115 (a) workers' compensation coverage in accordance with Title 34A, Chapter 2, Workers'
1116 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

1117 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
1118 Employment Security Act.

1119 Section 10. Section **58-55-502** is amended to read:

1120 **58-55-502. Unprofessional conduct.**

1121 Unprofessional conduct includes:

1122 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed
1123 as a contractor under this chapter;

1124 (2) disregarding or violating through gross negligence or a pattern of negligence:

1125 (a) the building or construction laws of this state or any political subdivision;

1126 (b) the safety and labor laws applicable to a project;

1127 (c) any provision of the health laws applicable to a project;

1128 (d) the workers' compensation insurance laws of this state applicable to a project;

1129 (e) the laws governing withholdings for employee state and federal income taxes,
1130 unemployment taxes, ~~[FICA]~~ Social Security payroll taxes, or other required withholdings; or

1131 (f) any reporting, notification, and filing laws of this state or the federal government;

1132 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
1133 licensee's direction which causes material injury to another;

1134 (4) contract violations that pose a threat or potential threat to the public health, safety,
1135 and welfare including:

1136 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
1137 specifications, or abandonment or failure to complete a project without the consent of the
1138 owner or ~~[his]~~ the owner's duly authorized representative or the consent of any other person
1139 entitled to have the particular project completed in accordance with the plans, specifications,
1140 and contract terms;

1141 (b) failure to deposit funds to the benefit of an employee as required under any written
1142 contractual obligation the licensee has to the employee;

1143 (c) failure to maintain in full force and effect any health insurance benefit to an

1144 employee that was extended as a part of any written contractual obligation or representation by
1145 the licensee, unless the employee is given written notice of the licensee's intent to cancel or
1146 reduce the insurance benefit at least 45 days before the effective date of the cancellation or
1147 reduction;

1148 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section
1149 38-11-207;

1150 (e) failure to provide, when applicable, the information required by Section 38-11-108;
1151 and

1152 (f) willfully or deliberately misrepresenting or omitting a material fact in connection
1153 with an application to claim recovery from the Residence Lien Recovery Fund under Section
1154 38-11-204;

1155 (5) failing as an alarm company to notify the division of the cessation of performance
1156 of its qualifying agent, or failing to replace its qualifying agent as required under Section
1157 58-55-304;

1158 (6) failing as an alarm company agent to carry or display a copy of the licensee's
1159 license as required under Section 58-55-311; [~~or~~]

1160 (7) failing to comply with operating standards established by rule in accordance with
1161 Section 58-55-308[-];

1162 (8) an individual who owns an interest in an unincorporated entity, except an interest
1163 held by an employee under an employee stock option plan or its equivalent, engaging in a
1164 construction trade in Utah while not lawfully present in the United States; or

1165 (9) an unincorporated entity failing to provide the following for an individual who
1166 owns less than a 20% interest in the unincorporated entity, as defined by rule made by the
1167 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except
1168 an interest held by an employee under an employee stock option plan or its equivalent, if the
1169 individual engages, or will engage, in a construction trade in Utah for the unincorporated
1170 entity:

1171 (a) workers' compensation coverage in accordance with Title 34A, Chapter 2, Workers'
1172 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

1173 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
1174 Employment Security Act.

1175 Section 11. Section **58-55-503** is amended to read:

1176 **58-55-503. Penalty for unlawful conduct -- Citations.**

1177 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
1178 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), [or] (23), (24), or (25), or Subsection
1179 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
1180 guilty of a class A misdemeanor.

1181 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
1182 individual and does not include a sole proprietorship, joint venture, corporation, limited
1183 liability company, association, or organization of any type.

1184 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
1185 awarded and may not accept a contract for the performance of the work.

1186 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
1187 infraction unless the violator did so with the intent to deprive the person to whom money is to
1188 be paid of the money received, in which case the violator is guilty of theft, as classified in
1189 Section 76-6-412.

1190 (3) Grounds for immediate suspension of the licensee's license by the division and the
1191 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
1192 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
1193 report to, or notify the division with respect to any matter for which application, notification, or
1194 reporting is required under this chapter or rules adopted under this chapter, including applying
1195 to the division for a new license to engage in a new specialty classification or to do business
1196 under a new form of organization or business structure, filing with the division current
1197 financial statements, notifying the division concerning loss of insurance coverage, or change in
1198 qualifier.

1199 (4) (a) If upon inspection or investigation, the division concludes that a person has
1200 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
1201 (10), (12), (14), (19), (21), (22), [or] (23), (24), or (25), or Subsection 58-55-504(2), or any rule
1202 or order issued with respect to these subsections, and that disciplinary action is appropriate, the
1203 director or the director's designee from within the division shall promptly issue a citation to the
1204 person according to this chapter and any pertinent rules, attempt to negotiate a stipulated
1205 settlement, or notify the person to appear before an adjudicative proceeding conducted under

1206 Title 63G, Chapter 4, Administrative Procedures Act.

1207 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
1208 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), [~~or~~] (23), (24), or (25),
1209 or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or
1210 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
1211 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from
1212 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),
1213 [~~or~~] (21), (24), or (25), or Subsection 58-55-504(2).

1214 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1215 58-55-401 may not be assessed through a citation.

1216 [~~(iii) (A) A person who receives a citation or is fined for violating Subsection~~
1217 ~~58-55-501(21) may also be issued a cease and desist order from engaging in work to be~~
1218 ~~performed by a contractor licensed under this chapter unless the person meets the continuing~~
1219 ~~education requirement within 30 days after receipt of the citation or fine.]~~

1220 [~~(B) The order, if issued, shall be removed upon the person's completion of the~~
1221 ~~continuing education requirement.]~~

1222 [~~(C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.]~~

1223 (b) (i) [~~Each~~] A citation shall be in writing and describe with particularity the nature of
1224 the violation, including a reference to the provision of the chapter, rule, or order alleged to have
1225 been violated.

1226 (ii) [~~The~~] A citation shall clearly state that the recipient must notify the division in
1227 writing within 20 calendar days of service of the citation if the recipient wishes to contest the
1228 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1229 (iii) [~~The~~] A citation shall clearly explain the consequences of failure to timely contest
1230 the citation or to make payment of any fines assessed by the citation within the time specified
1231 in the citation.

1232 (c) [~~Each~~] A citation issued under this section, or a copy of [~~each~~] a citation, may be
1233 served upon a person upon whom a summons may be served:

1234 (i) in accordance with the Utah Rules of Civil Procedure;

1235 (ii) personally or upon the person's agent by a division investigator or by a person
1236 specially designated by the director; or

- 1237 (iii) by mail.
- 1238 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
1239 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1240 final order of the division and is not subject to further agency review.
- 1241 (ii) The period to contest a citation may be extended by the division for cause.
- 1242 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
1243 the license of a licensee who fails to comply with a citation after it becomes final.
- 1244 (f) The failure of an applicant for licensure to comply with a citation after it becomes
1245 final is a ground for denial of license.
- 1246 (g) ~~[No]~~ A citation may not be issued under this section after the expiration of six
1247 months following the occurrence of ~~[any]~~ a violation.
- 1248 (h) ~~[Fines shall be assessed by the]~~ The director or the director's designee ~~[according~~
1249 ~~to]~~ shall assess a fine in accordance with the following:
- 1250 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
- 1251 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
- 1252 and
- 1253 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
1254 \$2,000 for each day of continued offense.
- 1255 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
1256 Subsection (4)(h), an offense constitutes a second or subsequent offense if:
- 1257 (A) the division previously issued a final order determining that a person committed a
1258 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
1259 (3), (9), (10), (12), (14), ~~[or]~~ (19), (24), or (25), or Subsection 58-55-504(2); or
- 1260 (B) (I) the division initiated an action for a first or second offense;
- 1261 (II) ~~[no]~~ a final order has not been issued by the division in the action initiated under
1262 Subsection (4)(i)(i)(B)(I);
- 1263 (III) the division determines during an investigation that occurred after the initiation of
1264 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
1265 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
1266 (10), (12), (14), ~~[or]~~ (19), (24), or (25), or Subsection 58-55-504(2); and
- 1267 (IV) after determining that the person committed a second or subsequent offense under

1268 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
1269 Subsection (4)(i)(i)(B)(I).

1270 (ii) In issuing a final order for a second or subsequent offense under Subsection
1271 (4)(i)(i), the division shall comply with the requirements of this section.

1272 (j) In addition to any other licensure sanction or fine imposed under this section, the
1273 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
1274 two or more times within a 12-month period.

1275 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
1276 for each individual is considered a separate violation.

1277 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
1278 into the Commerce Service Account created by Section 13-1-2.

1279 (b) A penalty [~~which~~] that is not paid may be collected by the director by either
1280 referring the matter to a collection agency or bringing an action in the district court of the
1281 county in which the person against whom the penalty is imposed resides or in the county where
1282 the office of the director is located.

1283 (c) A county attorney or the attorney general of the state is to provide legal assistance
1284 and advice to the director in any action to collect the penalty.

1285 (d) In an action brought to enforce the provisions of this section, reasonable [~~attorney's~~]
1286 attorney fees and costs shall be awarded.

1287 Section 12. Section **63G-2-302** is amended to read:

1288 **63G-2-302. Private records.**

1289 (1) The following records are private:

1290 (a) records concerning an individual's eligibility for unemployment insurance benefits,
1291 social services, welfare benefits, or the determination of benefit levels;

1292 (b) records containing data on individuals describing medical history, diagnosis,
1293 condition, treatment, evaluation, or similar medical data;

1294 (c) records of publicly funded libraries that when examined alone or with other records
1295 identify a patron;

1296 (d) records received by or generated by or for:

1297 (i) the Independent Legislative Ethics Commission, except for:

1298 (A) the commission's summary data report that is required under legislative rule; and

- 1299 (B) any other document that is classified as public under legislative rule; or
1300 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
1301 unless the record is classified as public under legislative rule;
- 1302 (e) records received or generated for a Senate confirmation committee concerning
1303 character, professional competence, or physical or mental health of an individual:
- 1304 (i) if prior to the meeting, the chair of the committee determines release of the records:
1305 (A) reasonably could be expected to interfere with the investigation undertaken by the
1306 committee; or
- 1307 (B) would create a danger of depriving a person of a right to a fair proceeding or
1308 impartial hearing; and
- 1309 (ii) after the meeting, if the meeting was closed to the public;
- 1310 (f) employment records concerning a current or former employee of, or applicant for
1311 employment with, a governmental entity that would disclose that individual's home address,
1312 home telephone number, Social Security number, insurance coverage, marital status, or payroll
1313 deductions;
- 1314 (g) records or parts of records under Section 63G-2-303 that a current or former
1315 employee identifies as private according to the requirements of that section;
- 1316 (h) that part of a record indicating a person's Social Security number or federal
1317 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
1318 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 1319 (i) that part of a voter registration record identifying a voter's driver license or
1320 identification card number, Social Security number, or last four digits of the Social Security
1321 number;
- 1322 (j) a record that:
- 1323 (i) contains information about an individual;
- 1324 (ii) is voluntarily provided by the individual; and
- 1325 (iii) goes into an electronic database that:
- 1326 (A) is designated by and administered under the authority of the Chief Information
1327 Officer; and
- 1328 (B) acts as a repository of information about the individual that can be electronically
1329 retrieved and used to facilitate the individual's online interaction with a state agency;

- 1330 (k) information provided to the Commissioner of Insurance under:
- 1331 (i) Subsection 31A-23a-115(2)(a);
- 1332 (ii) Subsection 31A-23a-302(3); or
- 1333 (iii) Subsection 31A-26-210(3);
- 1334 (l) information obtained through a criminal background check under Title 11, Chapter
- 1335 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 1336 (m) information provided by an offender that is:
- 1337 (i) required by the registration requirements of Section 77-27-21.5; and
- 1338 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);
- 1339 and
- 1340 (n) a statement and any supporting documentation filed with the attorney general in
- 1341 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 1342 homeland security.
- 1343 (2) The following records are private if properly classified by a governmental entity:
- 1344 (a) records concerning a current or former employee of, or applicant for employment
- 1345 with a governmental entity, including performance evaluations and personal status information
- 1346 such as race, religion, or disabilities, but not including records that are public under Subsection
- 1347 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);
- 1348 (b) records describing an individual's finances, except that the following are public:
- 1349 (i) records described in Subsection 63G-2-301(2);
- 1350 (ii) information provided to the governmental entity for the purpose of complying with
- 1351 a financial assurance requirement; or
- 1352 (iii) records that must be disclosed in accordance with another statute;
- 1353 (c) records of independent state agencies if the disclosure of those records would
- 1354 conflict with the fiduciary obligations of the agency;
- 1355 (d) other records containing data on individuals the disclosure of which constitutes a
- 1356 clearly unwarranted invasion of personal privacy;
- 1357 (e) records provided by the United States or by a government entity outside the state
- 1358 that are given with the requirement that the records be managed as private records, if the
- 1359 providing entity states in writing that the record would not be subject to public disclosure if
- 1360 retained by it; and

1361 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
1362 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
1363 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

1364 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
1365 records, statements, history, diagnosis, condition, treatment, and evaluation.

1366 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
1367 doctors, or affiliated entities are not private records or controlled records under Section
1368 63G-2-304 when the records are sought:

1369 (i) in connection with any legal or administrative proceeding in which the patient's
1370 physical, mental, or emotional condition is an element of any claim or defense; or

1371 (ii) after a patient's death, in any legal or administrative proceeding in which any party
1372 relies upon the condition as an element of the claim or defense.

1373 (c) Medical records are subject to production in a legal or administrative proceeding
1374 according to state or federal statutes or rules of procedure and evidence as if the medical
1375 records were in the possession of a nongovernmental medical care provider.

1376 Section 13. Section **63G-11-104** is amended to read:

1377 **63G-11-104. Receipt of state, local, or federal public benefits -- Verification --**
1378 **Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

1379 (1) As used in this section, "federal program" means the Systematic Alien Verification
1380 for Entitlements Program operated by the United States Department of Homeland Security or
1381 an equivalent program designated by the Department of Homeland Security.

1382 (2) (a) Except as provided in Subsection (4) or when exempted by federal law, an
1383 agency or political subdivision of the state shall verify the lawful presence in the United States
1384 of an individual at least 18 years of age who applies for:

1385 [~~(a)~~] (i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

1386 [~~(b)~~] (ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered
1387 by an agency or political subdivision of this state.

1388 (b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction
1389 Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of
1390 Commerce shall verify in accordance with this Subsection (2) the lawful presence in the United
1391 States of each individual who:

1392 (i) owns an interest in the contractor that is an unincorporated entity, except an interest
1393 held by an employee under an employee stock option plan or its equivalent; 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 If approved by two-thirds of all the members elected to each house, this bill takes effect

1485 upon approval by the governor, or the day following the constitutional time limit of Utah
1486 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1487 the date of veto override.

Legislative Review Note
as of 1-5-11 5:35 PM

Office of Legislative Research and General Counsel