

## SB0035S01 compared with SB0035

~~{deleted text}~~ shows text that was in SB0035 but was deleted in SB0035S01.

inserted text shows text that was not in SB0035 but was inserted into SB0035S01.

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Senator Karen Mayne proposes the following substitute bill:

### CONSTRUCTION LICENSEES RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: Todd E. Kiser

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ amends provisions related to wages, workers' compensation, antidiscrimination, and occupational safety and health, to address coverage of owners of unincorporated entities that are construction licensees;
- ▶ amends definitions;
- ▶ modifies requirements related to applying for a contractor license;
- ▶ addresses demonstration of financial responsibility;
- ▶ addresses administrative actions that can be taken related to unprofessional or

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unlawful conduct;

- ▶ addresses lawful presence in the United States;
- ▶ imposes workers' compensation and unemployment coverage requirements related to certain construction licensees; and
- ▶ makes technical and conforming amendments.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill ~~provides an immediate effective date~~; takes effect on July 1, 2011.

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this chapter:

[(+) (a) "Commission" means the Labor Commission.

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

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

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

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

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

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

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

(i) is an active manager of the unincorporated entity;  
(ii) directly or indirectly holds at least a 20% ownership interest in the unincorporated entity; or

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

(A) the unincorporated entity; or

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

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

(i) "active manager";

(ii) "directly or indirectly holds at least a 20% ownership interest"; and

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

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

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### on non-regular paydays.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a

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covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.

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

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

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

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

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

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

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

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

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

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

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an

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agricultural employer is not considered an employer of a member of the employer's immediate family.

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

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

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

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

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

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

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

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

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

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

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

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

(b) the rules of the commission.

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

(A) a sole proprietorship;

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- (B) a corporation;
- (C) a partnership;
- (D) a limited liability company; or
- (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) is an employer; and

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

including:

(I) all persons employed by the contractor;

(II) all subcontractors under the contractor; and

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

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

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

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

(B) (I) secures the payment of workers' compensation benefits for the contractor or



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subcontractor pursuant to Section 34A-2-201;

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

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

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

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

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

(C) (I) obtains and relies on:

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

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

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

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

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

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

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

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

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

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

(i) an individual;

(ii) a corporation; or

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(iii) publicly traded.

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

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

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

~~(1)~~ As used in this chapter:

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

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

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

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

~~(3)~~ ~~(c)~~ "Court" means:

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

~~(b)~~ ~~(ii)~~ if this court is not in session at that time, a judge of the court described in Subsection ~~(3)(a)~~ ~~(1)(c)(i)~~.

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

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

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

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

~~(8)~~ ~~(a)~~ ~~(h)~~ ~~(i)~~ "Employer" means:

~~(i)~~ ~~(A)~~ the state;

~~(ii)~~ ~~(B)~~ any political subdivision;

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

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

~~(b)~~ (i) "Employer" does not include:

~~(i)~~ (A) a religious organization or association;

~~(ii)~~ (B) a religious corporation sole; or

~~(iii)~~ (C) any corporation or association constituting a wholly owned subsidiary or agency of any religious organization or association or religious corporation sole.

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

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

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

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

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

~~(a)~~ (i) collective bargaining;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

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

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

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

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

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

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

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(A) the unincorporated entity; or

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

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

(i) "active manager";

(ii) "~~directly or indirectly holds at least a~~ 20% ownership interest"; and

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

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

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

(1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

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

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

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

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

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

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

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

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

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

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

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

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

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member:

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

(ii) directly or indirectly holds at least a 20% ownership interest in the unincorporated

entity; or

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

(A) the unincorporated entity; or

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

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

(i) "active manager";

(ii) "directly or indirectly holds at least a 20% ownership interest"; and

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

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

### **58-55-102. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Construction trades instructor" means a person licensed under this chapter to



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teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of the instructor, who has no economic interest in the project.

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

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

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

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

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

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

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

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

(b) "Electrical trade" does not include:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or

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

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

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

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

(14) "Elevator" has the same meaning as defined in Section 34A-7-202, except that for

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purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline platform lift.

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

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

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

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

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

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

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

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

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

(21) (a) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the general building contractor shall employ the services of a contractor

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licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

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

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

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

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

- (a) as the division specifies in rule;
- (b) by, as applicable, a qualified electrician or plumber;
- (c) as part of a planned program of training; and
- (d) to ensure that the end result complies with applicable standards.

(24) "Individual" means a natural person.

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

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

(27) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan,

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layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

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

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

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

- (i) delivery of the water supply;
- (ii) discharge of liquid and water carried waste; or
- (iii) the building drainage system within the walls of the building.

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

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

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

(32) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured

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housing installation, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

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

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

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

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

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

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

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

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interest of the public health, safety, and welfare.

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

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

(a) an individual;

(b) a corporation; or

(c) publicly traded.

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

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

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

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

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

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

(a) submit an application prescribed by the division;

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

(c) (i) meet the examination requirements established by rule by the commission with the concurrence of the director, except for the classifications of apprentice plumber and apprentice electrician for whom no examination is required; or

(ii) if required in Section 58-55-304, the individual qualifier must pass the required examination if the applicant is a business entity;

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

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

(i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;

(ii) produce satisfactory evidence of knowledge and experience in the construction industry and knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare; ~~[and]~~

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(iii) (A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;

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

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

(iv) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant ~~{, except through an employee stock option plan or its equivalent.}~~ as of the day on which the application is filed, that includes for each individual:

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

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

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

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

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

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

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

(i) Utah Department of Commerce;

(ii) Division of Corporations and Commercial Code;

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

(iv) State Tax Commission; and

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(v) Internal Revenue Service.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(ii) a licensed apprentice plumber in the fourth through tenth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period, but if the apprentice does not become a licensed journeyman plumber or licensed residential journeyman

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plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer applies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) An alarm company applicant shall:

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

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

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

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

(ii) if a corporation, provide:

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

(B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this

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shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

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

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

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

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

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

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

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

(ix) document that none of the applicant's officers, directors, shareholders described in

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Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

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

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

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

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

(I) Division of Corporations and Commercial Code;

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

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(xi) meet with the division and board.

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

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

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

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(m) (i) Each applicant for licensure as an elevator mechanic shall:

(A) provide documentation of experience and education credits of not less than three years work experience in the elevator industry, in construction, maintenance, or service and repair; and

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(B) satisfactorily complete a written examination administered by the division established by rule under Section 58-1-203; or

(C) provide certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter and registered with the United States Department of Labor Bureau Apprenticeship and Training or a state apprenticeship council.

(ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, the contractor may:

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

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

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

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

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

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

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

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the [~~F.B.I.~~] Federal Bureau of Investigation for criminal history

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information under this section.

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

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

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

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

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

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

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

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

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

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

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

(B) any owner or agent acting as a qualifier has served in any capacity listed in

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Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) If an applicant for licensure as a contractor or a licensee applying for renewal or reinstatement of a contractor's license is an unincorporated entity, the division may require each

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individual who holds an ownership interest in the applicant or licensee ~~(, except through an employee stock option plan or its equivalent.)~~ to demonstrate financial responsibility to the division and the commission.

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

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

(ii) a credit report for each owner.

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

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

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

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

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

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

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

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

(c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund created by Section 38-11-201;

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

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

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

(2) In addition to an action taken under Subsection (1), the division may take an action described in Subsection 58-1-401(2) in relation to a license as a contractor, if:

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

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

in:

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

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

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

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

Unlawful conduct includes:

- (1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;
- (2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;
- (3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;
- (4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;
- (5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;
- (6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;
- (7) failing to obtain a building permit when required by law or rule;
- (8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
- (9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
- (10) allowing one's license to be used by another except as provided by statute or rule;
- (11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;
- (12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's

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supervision or exceeding the number of apprentices one is allowed to have under [his] the speciality contractor's supervision;

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

(14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(24) an unincorporated entity licensed under this chapter having an individual who owns an interest in ~~an~~the unincorporated entity~~, except an interest held by an employee under an employee stock option plan or its equivalent, engaging~~ engage in a construction trade in Utah while not lawfully present in the United States; or

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

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

(b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, ~~for an individual who owns, directly or indirectly, less than a 20% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

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

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

Unprofessional conduct includes:

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

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- (2) disregarding or violating through gross negligence or a pattern of negligence:
- (a) the building or construction laws of this state or any political subdivision;
  - (b) the safety and labor laws applicable to a project;
  - (c) any provision of the health laws applicable to a project;
  - (d) the workers' compensation insurance laws of this state applicable to a project;
  - (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, ~~[FICA]~~ Social Security payroll taxes, or other required withholdings; or
  - (f) any reporting, notification, and filing laws of this state or the federal government;
- (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) unemployment compensation in accordance with Title 35A, Chapter 4, Employment Security Act, ~~for an individual who owns, directly or indirectly, less than a 20% interest in the unincorporated entity, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

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

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

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

(ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an

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individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

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

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

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

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), ~~or~~ (23), (24), or (25), or Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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



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~~[or]~~ (21), ~~(24), or (25)~~, or Subsection 58-55-504(2).

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

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

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

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

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

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

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

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

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

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

(iii) by mail.

(d) (i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

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

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

(g) ~~[No]~~ A citation may not be issued under this section after the expiration of six months following the occurrence of ~~[any]~~ a violation.

(h) ~~[Fines shall be assessed by the]~~ The director or the director's designee ~~[according to]~~ shall assess a fine in accordance with the following:

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

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

and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.

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

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), ~~[or]~~ (19), (24), or (25), or Subsection 58-55-504(2); or

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

(II) ~~[no]~~ a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), ~~[or]~~ (19), (24), or (25), or Subsection 58-55-504(2); and

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

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

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

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

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

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

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

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

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

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

(1) The following records are private:

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

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

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

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

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

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

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the

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committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

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

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

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

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

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

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

(m) information provided by an offender that is:

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- (i) required by the registration requirements of Section 77-27-21.5; and
- (ii) not required to be made available to the public under Subsection 77-27-21.5(27);

and

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

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

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

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

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

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

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

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

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

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

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

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

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section

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63G-2-304 when the records are sought:

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

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

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

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

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

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

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

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

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

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

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

(ii) engages, or will engage, in a construction trade in Utah as an owner of the contractor described in Subsection (2)(b)(i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is registered with the Financial Industry Regulatory Authority; and

(ii) files an application with the state Division of Securities through the Central Registration Depository;

(h) a state public benefit to be given to an individual under Title 49, Utah State Retirement and Insurance Benefit Act;

(i) a home loan that will be insured, guaranteed, or purchased by:

(i) the Federal Housing Administration, the Veterans Administration, or any other federal agency; or

(ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

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(j) a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under Subsection (4)(i); and

(k) an applicant for a license issued by the Department of Commerce or individual described in Subsection (2)(b), if the applicant or individual provides the Department of Commerce:

(i) certification, under penalty of perjury, that the applicant or individual is:

(A) a United States citizen;

(B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

(C) lawfully present in the United States; and

~~[(ii) a valid driver license number for a driver license issued by:]~~

~~[(A) Utah; or]~~

(ii) the number for a driver license or identification card issued:

(A) under Title 53, Chapter 3, Uniform Driver License Act; or

(B) by a state other than Utah that as part of issuing the driver license or identification card verifies an individual's lawful presence in the United States.

(5) An agency or political subdivision required to verify the lawful presence in the United States of an applicant under this section shall require the applicant to certify under penalty of perjury that:

(a) the applicant is a United States citizen; or

(b) the applicant is:

(i) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

(ii) lawfully present in the United States.

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

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

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

(ii) fraudulently obtaining:

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

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



## SB0035S01 compared with SB0035

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

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

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

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

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

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

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

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

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

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

Section 14. **Effective date.**

~~{If approved by two-thirds of all the members elected to each house, this}~~ **This** bill takes effect ~~{upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~

**SB0035S01 compared with SB0035**

Legislative Review Note

~~as of 1-5-11 5:35 PM~~

Office of Legislative Research and General Counsel; on July 1, 2011.