

Representative Todd E. Kiser proposes the following substitute bill:

CONSTRUCTION LICENSEES RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2011.

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **34-28-2**, as last amended by Laws of Utah 1997, Chapter 375
- 33 **34A-2-103**, as last amended by Laws of Utah 2008, Chapters 250, 263, and 318
- 34 **34A-2-110**, as last amended by Laws of Utah 2008, Chapter 263
- 35 **34A-5-102**, as last amended by Laws of Utah 2008, Chapter 382
- 36 **34A-6-103**, as last amended by Laws of Utah 2008, Chapter 382
- 37 **58-55-102**, as last amended by Laws of Utah 2010, Chapters 27, 53, and 227
- 38 **58-55-302**, as last amended by Laws of Utah 2010, Chapters 227 and 372
- 39 **58-55-306**, as last amended by Laws of Utah 2002, Chapter 241
- 40 **58-55-401**, as renumbered and amended by Laws of Utah 1994, Chapters 181 and 308
- 41 **58-55-501**, as last amended by Laws of Utah 2010, Chapters 53 and 387
- 42 **58-55-502**, as last amended by Laws of Utah 2001, Chapter 198
- 43 **58-55-503**, as last amended by Laws of Utah 2010, Chapters 278 and 387
- 44 **63G-2-302**, as last amended by Laws of Utah 2010, Chapters 36 and 379
- 45 **63G-11-104**, as last amended by Laws of Utah 2010, Chapter 191



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

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

49 **34-28-2. Definitions -- Unincorporated entities.**

50 (1) As used in this chapter:

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

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

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

56 (d) "Unincorporated entity" means an entity organized or doing business in the state

57 that is not:

58 (i) an individual;

59 (ii) a corporation; or

60 (iii) publicly traded.

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

64 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
65 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
66 be the employer of each individual who, directly or indirectly, holds an ownership interest in
67 the unincorporated entity.

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

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

73 (ii) directly or indirectly holds at least a 8% ownership interest in the unincorporated
74 entity; and

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

76 (A) the unincorporated entity; or

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

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

79 (i) "active manager";

80 (ii) "directly or indirectly holds at least a 8% ownership interest"; and

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

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

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

87 **34A-2-103. Employers enumerated and defined -- Regularly employed --**

88 **Statutory employers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

117 (b) The division shall promptly inform the Insurance Department if the division has
118 reason to believe that a professional employer organization is not in compliance with

119 Subsection 34A-2-201(1) or (2) and commission rules.

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

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

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

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

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

132 (A) an agricultural employer's:

133 (I) spouse;

134 (II) grandparent;

135 (III) parent;

136 (IV) sibling;

137 (V) child;

138 (VI) grandchild;

139 (VII) nephew; or

140 (VIII) niece;

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

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

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

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

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

150 agricultural employer is not considered an employer of a nonimmediate family employee if:

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

153 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
154 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
155 \$50,000; and

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

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

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

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

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

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

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

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

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

173 (b) the rules of the commission.

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

177 (A) a sole proprietorship;

178 (B) a corporation;

179 (C) a partnership;

180 (D) a limited liability company; or

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

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

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

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

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

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

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

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

206 (d) A director or officer of a corporation is not considered an employee under
207 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
208 34A-2-104(4).

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

212 (i) a valid certification of the contractor's or subcontractor's compliance with Section
213 34A-2-201; or

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

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

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

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

225 (A) is an employer; and

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

228 (I) all persons employed by the contractor;

229 (II) all subcontractors under the contractor; and

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

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

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

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

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

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

243 (III) does the following with regard to a written workplace accident and injury
244 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
245 (Aa) adopts the workplace accident and injury reduction program;
246 (Bb) posts the workplace accident and injury reduction program at the work site at
247 which the eligible employer procures work; and
248 (Cc) enforces the workplace accident and injury reduction program according to the
249 terms of the workplace accident and injury reduction program; or
250 (C) (I) obtains and relies on:
251 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
252 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
253 (7)(e)(ii); or
254 (Cc) proof that a director or officer is excluded from coverage under Subsection
255 34A-2-104(4);
256 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
257 if the contractor or subcontractor fails to comply with Section 34A-2-201;
258 (III) procures work to be done that is part or process in the trade or business of the
259 eligible employer; and
260 (IV) does the following with regard to a written workplace accident and injury
261 reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
262 (Aa) adopts the workplace accident and injury reduction program;
263 (Bb) posts the workplace accident and injury reduction program at the work site at
264 which the eligible employer procures work; and
265 (Cc) enforces the workplace accident and injury reduction program according to the
266 terms of the workplace accident and injury reduction program.
267 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity
268 organized or doing business in the state that is not:
269 (i) an individual;
270 (ii) a corporation; or
271 (iii) publicly traded.
272 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
273 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah

274 Construction Trades Licensing Act, is considered the employer of each individual who holds,
275 directly or indirectly, an ownership interest in the unincorporated entity. Notwithstanding
276 Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the
277 individual who holds the ownership interest workers' compensation coverage under this chapter
278 and Chapter 3, Utah Occupational Disease Act.

279 Section 3. Section **34A-2-110** is amended to read:

280 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
281 **Notice.**

282 (1) As used in this section:

283 (a) "Corporation" has the same meaning as in Section 76-2-201.

284 (b) "Intentionally" has the same meaning as in Section 76-2-103.

285 (c) "Knowingly" has the same meaning as in Section 76-2-103.

286 (d) "Person" has the same meaning as in Section 76-1-601.

287 (e) "Recklessly" has the same meaning as in Section 76-2-103.

288 (f) "Thing of value" means one or more of the following obtained under this chapter or
289 Chapter 3, Utah Occupational Disease Act:

290 (i) workers' compensation insurance coverage;

291 (ii) disability compensation;

292 (iii) a medical benefit;

293 (iv) a good;

294 (v) a professional service;

295 (vi) a fee for a professional service; or

296 (vii) anything of value.

297 (2) (a) A person is guilty of workers' compensation insurance fraud if that person
298 intentionally, knowingly, or recklessly:

299 (i) devises a scheme or artifice to do the following by means of a false or fraudulent
300 pretense, representation, promise, or material omission:

301 (A) obtain a thing of value under this chapter or Chapter 3;

302 (B) avoid paying the premium that an insurer charges, for an employee on the basis of
303 the underwriting criteria applicable to that employee, to obtain a thing of value under this
304 chapter or Chapter 3; or

305 (C) deprive an employee of a thing of value under this chapter or Chapter 3; and
306 (ii) communicates or causes a communication with another in furtherance of the
307 scheme or artifice.

308 (b) A violation of this Subsection (2) includes a scheme or artifice to:

309 (i) make or cause to be made a false written or oral statement with the intent to obtain
310 insurance coverage as mandated by this chapter or Chapter 3 at a rate that does not reflect the
311 risk, industry, employer, or class code actually covered by the insurance coverage;

312 (ii) form a business, reorganize a business, or change ownership in a business with the
313 intent to:

314 (A) obtain insurance coverage as mandated by this chapter or Chapter 3 at a rate that
315 does not reflect the risk, industry, employer, or class code actually covered by the insurance
316 coverage;

317 (B) misclassify an employee as described in Subsection (2)(b)(iii); or

318 (C) deprive an employee of workers' compensation coverage as required by Subsection
319 34A-2-103(8);

320 (iii) misclassify an employee as one of the following so as to avoid the obligation to
321 obtain insurance coverage as mandated by this chapter or Chapter 3:

322 (A) an independent contractor;

323 (B) a sole proprietor;

324 (C) an owner;

325 (D) a partner;

326 (E) an officer; or

327 (F) a member in a limited liability company;

328 (iv) use a workers' compensation coverage waiver issued under Section 31A-22-1011
329 to deprive an employee of workers' compensation coverage under this chapter or Chapter 3; or

330 (v) collect or make a claim for temporary disability compensation as provided in
331 Section 34A-2-410 while working for gain.

332 (3) (a) Workers' compensation insurance fraud under Subsection (2) is punishable in
333 the manner prescribed in Subsection (3)(c).

334 (b) A corporation or association is guilty of the offense of workers' compensation
335 insurance fraud under the same conditions as those set forth in Section 76-2-204.

336 (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an
337 offense under Subsection (2) shall be measured by the following on the basis of which creates
338 the greatest penalty:

339 (A) the total value of all property, money, or other things obtained or sought to be
340 obtained by the scheme or artifice described in Subsection (2); or

341 (B) the number of individuals not covered under this chapter or Chapter 3 because of
342 the scheme or artifice described in Subsection (2).

343 (ii) A person is guilty of:

344 (A) a class A misdemeanor:

345 (I) if the value of the property, money, or other thing of value described in Subsection
346 (3)(c)(i)(A) is less than \$1,000; or

347 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
348 individuals described in Subsection (3)(c)(i)(B) is less than five;

349 (B) a third degree felony:

350 (I) if the value of the property, money, or other thing of value described in Subsection
351 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

352 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
353 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than
354 50; and

355 (C) a second degree felony:

356 (I) if the value of the property, money, or other thing of value described in Subsection
357 (3)(c)(i)(A) is equal to or greater than \$5,000; or

358 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
359 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

360 (4) The following are not a necessary element of an offense described in Subsection
361 (2):

362 (a) reliance on the part of a person;

363 (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to
364 permanently deprive a person of property, money, or anything of value; or

365 (c) an insurer or self-insured employer giving written notice in accordance with
366 Subsection (5) that workers' compensation insurance fraud is a crime.

367 (5) (a) An insurer or self-insured employer who, in connection with this chapter or
368 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in
369 Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other
370 content on the form the statement: "Any person who knowingly presents false or fraudulent
371 underwriting information, files or causes to be filed a false or fraudulent claim for disability
372 compensation or medical benefits, or submits a false or fraudulent report or billing for health
373 care fees or other professional services is guilty of a crime and may be subject to fines and
374 confinement in state prison."

375 (b) Subsection (5)(a) applies to a form upon which a person:

376 (i) applies for insurance coverage;

377 (ii) applies for a workers' compensation coverage waiver issued under Section
378 31A-22-1011;

379 (iii) reports payroll;

380 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss;

381 or

382 (v) makes a report or gives notice to an insurer or self-insured employer.

383 (c) An insurer or self-insured employer who issues a check, warrant, or other financial
384 instrument in payment of compensation issued under this chapter or Chapter 3, shall cause to
385 be printed or displayed in comparative prominence above the area for endorsement a statement
386 substantially similar to the following: "Workers' compensation insurance fraud is a crime
387 punishable by Utah law."

388 (d) This Subsection (5) applies only to the legal obligations of an insurer or a
389 self-insured employer.

390 (e) A person who violates Subsection (2) is guilty of workers' compensation insurance
391 fraud, and the failure of an insurer or a self-insured employer to fully comply with this
392 Subsection (5) is not:

393 (i) a defense to violating Subsection (2); or

394 (ii) grounds for suppressing evidence.

395 (6) In the absence of malice, a person, employer, insurer, or governmental entity that
396 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim
397 is not subject to civil liability for libel, slander, or another relevant cause of action.

398 (7) In an action involving workers' compensation, this section supersedes Title 31A,
399 Chapter 31, Insurance Fraud Act.

400 Section 4. Section **34A-5-102** is amended to read:

401 **34A-5-102. Definitions -- Unincorporated entities.**

402 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

455 [~~(15)~~] (o) "Presiding officer" means the same as that term is defined in Section
456 63G-4-103.

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

459 [~~(17)~~] (q) "Retaliate" means the taking of adverse action by an employer, employment

460 agency, labor organization, apprenticeship program, on-the-job training program, or vocational
461 school against one of its employees, applicants, or members because the employee, applicant,
462 or member:

463 ~~[(a)]~~ (i) has opposed any employment practice prohibited under this chapter; or
464 ~~[(b)]~~ (ii) filed charges, testified, assisted, or participated in any way in any proceeding,
465 investigation, or hearing under this chapter.

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

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

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

475 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
476 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
477 be the employer of each individual who, directly or indirectly, holds an ownership interest in
478 the unincorporated entity.

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

- 483 (i) is an active manager of the unincorporated entity;
- 484 (ii) directly or indirectly holds at least a 8% ownership interest in the unincorporated
485 entity; and

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

- 487 (A) the unincorporated entity; or
- 488 (B) a person with whom the unincorporated entity contracts.

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

- 490 (i) "active manager";

491 (ii) "directly or indirectly holds at least a 8% ownership interest"; and

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

493 Section 5. Section **34A-6-103** is amended to read:

494 **34A-6-103. Definitions -- Unincorporated entities.**

495 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

509 operatives regularly employed in the same business, or in or about the same establishment,
510 under any contract of hire.

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

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

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

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

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

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

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

527 ~~[(I2)]~~ (l) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah
528 Administrative Rulemaking Act.

529 ~~[(I3)]~~ (m) "Secretary" means the Secretary of the United States Department of Labor.

530 ~~[(I4)]~~ (n) "Standard" means an occupational health and safety standard or group of
531 standards which requires conditions, or the adoption or use of one or more practices, means,
532 methods, operations, or processes, reasonably necessary to provide safety and healthful
533 employment and places of employment.

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

536 (i) an individual;

537 (ii) a corporation; or

538 (iii) publicly traded.

539 ~~[(I5)]~~ (p) "Variance" means a special, limited modification or change in the code or
540 standard applicable to the particular establishment of the employer or person petitioning for the
541 modification or change.

542 ~~[(I6)]~~ (q) "Workplace" means any place of employment.

543 ~~(2)~~ (a) For purposes of this chapter, an unincorporated entity that is required to be
544 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
545 be the employer of each individual who, directly or indirectly, holds an ownership interest in
546 the unincorporated entity.

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

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

552 (ii) directly or indirectly holds at least a 8% ownership interest in the unincorporated

553 entity; and

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

555 (A) the unincorporated entity; or

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

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

558 (i) "active manager";

559 (ii) "directly or indirectly holds at least a 8% ownership interest"; and

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

561 Section 6. Section **58-55-102** is amended to read:

562 **58-55-102. Definitions.**

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

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

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

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

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

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

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

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

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

582 (4) "Apprentice electrician" means a person licensed under this chapter as an
583 apprentice electrician who is learning the electrical trade under the immediate supervision of a

584 master electrician, residential master electrician, a journeyman electrician, or a residential
585 journeyman electrician.

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

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

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

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

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

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

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

601 (9) "Commission" means the Construction Services Commission created under Section
602 58-55-103.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

633 (i) transporting or handling electrical materials;

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

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

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

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

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

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

645 (15) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under

646 this chapter that is engaged in the business of erecting, constructing, installing, altering,
647 servicing, repairing, or maintaining an elevator.

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

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

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

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

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

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

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

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

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

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

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

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

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

692 (a) as the division specifies in rule;

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

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

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

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

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

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

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

707 (28) "Master plumber" means a person licensed under this chapter as a master plumber

708 having the qualifications, training, experience, and knowledge to properly plan and layout
709 projects and supervise persons in the plumbing trade.

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

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

715 (i) delivery of the water supply;

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

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

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

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

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

730 (32) "Residential and small commercial contractor" means a person licensed under this
731 chapter as a residential and small commercial contractor qualified by education, training,
732 experience, and knowledge to perform or superintend the construction of single-family
733 residences, multifamily residences up to four units, and commercial construction of not more
734 than three stories above ground and not more than 20,000 square feet, or any of the components
735 of that construction except plumbing, electrical work, mechanical work, and manufactured
736 housing installation, for which the residential and small commercial contractor shall employ
737 the services of a contractor licensed in the particular specialty, except that a residential and
738 small commercial contractor engaged in the construction of single-family and multifamily

739 residences up to four units may perform the mechanical work and hire a licensed plumber or
740 electrician as an employee.

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

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

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

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

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

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

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

768 (b) A specialty contractor may perform work in crafts or trades other than those in
769 which ~~he~~ the specialty contractor is licensed if they are incidental to the performance of ~~his~~

770 the specialty contractor's licensed craft or trade.

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

772 (a) an individual;

773 (b) a corporation; or

774 (c) publicly traded.

775 [~~40~~] (41) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

776 [~~41~~] (42) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502

777 and as may be further defined by rule.

778 [~~42~~] (43) "Wages" means amounts due to an employee for labor or services whether

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

780 calculating the amount.

781 Section 7. Section **58-55-302** is amended to read:

782 **58-55-302. Qualifications for licensure.**

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

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

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

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

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

788 apprentice electrician for whom no examination is required; or

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

790 examination if the applicant is a business entity;

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

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

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

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

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

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

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

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

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

800 contractor's license;

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

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

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

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

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

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

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

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

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

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

823 (i) Utah Department of Commerce;

824 (ii) Division of Corporations and Commercial Code;

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

827 (iv) State Tax Commission; and

828 (v) Internal Revenue Service.

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

832 (a) (i) A master plumber shall produce satisfactory evidence that the applicant:
833 (A) has been a licensed journeyman plumber for at least two years and had two years of
834 supervisory experience as a licensed journeyman plumber in accordance with division rule;
835 (B) has received at least an associate of applied science degree or similar degree
836 following the completion of a course of study approved by the division and had one year of
837 supervisory experience as a licensed journeyman plumber in accordance with division rule; or
838 (C) meets the qualifications determined by the division in collaboration with the board
839 to be equivalent to Subsection (3)(a)(i)(A) or (B).
840 (ii) An individual holding a valid Utah license as a journeyman plumber, based on at
841 least four years of practical experience as a licensed apprentice under the supervision of a
842 licensed journeyman plumber and four years as a licensed journeyman plumber, in effect
843 immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current
844 master plumber license under this chapter, and satisfies the requirements of this Subsection
845 (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.
846 (iii) An individual holding a valid plumbing contractor's license or residential
847 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
848 2008:
849 (A) considered to hold a current master plumber license under this chapter if licensed
850 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this
851 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
852 58-55-303; and
853 (B) considered to hold a current residential master plumber license under this chapter if
854 licensed as a residential plumbing contractor and a residential journeyman plumber, and
855 satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of
856 that license under Section 58-55-303.
857 (b) A master residential plumber applicant shall produce satisfactory evidence that the
858 applicant:
859 (i) has been a licensed residential journeyman plumber for at least two years and had
860 two years of supervisory experience as a licensed residential journeyman plumber in
861 accordance with division rule; or
862 (ii) meets the qualifications determined by the division in collaboration with the board

863 to be equivalent to Subsection (3)(b)(i).

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

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

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

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

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

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

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

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

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

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

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

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

893 (i) is a graduate electrical engineer of an accredited college or university approved by

894 the division and has one year of practical electrical experience as a licensed apprentice
895 electrician;

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

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

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

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

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

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

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

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

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

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

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

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

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

924 (iii) meets the qualifications determined by the division and applicable board to be

925 equivalent to Subsection (3)(i)(i) or (ii).

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

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

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

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

937 (k) An alarm company applicant shall:

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

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

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

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

945 (ii) if a corporation, provide:

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

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

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

954 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
955 of all company officers, and those responsible management personnel employed within the

956 state or having direct responsibility for managing operations of the applicant within the state;
957 and

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

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

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

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

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

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

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

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

986 (A) comprehensive general liability insurance in form and in amounts to be established

987 by rule by the commission with the concurrence of the director;

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

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

991 (I) Division of Corporations and Commercial Code;

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

994 (III) State Tax Commission; and

995 (IV) Internal Revenue Service; and

996 (xi) meet with the division and board.

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

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

1000 (ii) pay a fee determined by the department under Section 63J-1-504;

1001 (iii) be of good moral character in that the applicant has not been convicted of a felony,
1002 a misdemeanor involving moral turpitude, or any other crime that when considered with the
1003 duties and responsibilities of an alarm company agent is considered by the board to indicate
1004 that the best interests of the public are served by granting the applicant a license;

1005 (iv) not have been declared by any court of competent jurisdiction incompetent by
1006 reason of mental defect or disease and not been restored;

1007 (v) not be currently suffering from habitual drunkenness or from drug addiction or
1008 dependence; and

1009 (vi) meet with the division and board if requested by the division or the board.

1010 (m) (i) Each applicant for licensure as an elevator mechanic shall:

1011 (A) provide documentation of experience and education credits of not less than three
1012 years work experience in the elevator industry, in construction, maintenance, or service and
1013 repair; and

1014 (B) satisfactorily complete a written examination administered by the division
1015 established by rule under Section 58-1-203; or

1016 (C) provide certificates of completion of an apprenticeship program for elevator
1017 mechanics, having standards substantially equal to those of this chapter and registered with the

1018 United States Department of Labor Bureau Apprenticeship and Training or a state
1019 apprenticeship council.

1020 (ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed
1021 elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing,
1022 repairing, or maintaining an elevator, the contractor may:

1023 (I) notify the division of the unavailability of licensed personnel; and

1024 (II) request the division issue a temporary elevator mechanic license to an individual
1025 certified by the contractor as having an acceptable combination of documented experience and
1026 education to perform the work described in this Subsection (3)(m)(ii)(A).

1027 (B) (I) The division may issue a temporary elevator mechanic license to an individual
1028 certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by
1029 the appropriate fee as determined by the department under Section 63J-1-504.

1030 (II) The division shall specify the time period for which the license is valid and may
1031 renew the license for an additional time period upon its determination that a shortage of
1032 licensed elevator mechanics continues to exist.

1033 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1034 division may make rules establishing when Federal Bureau of Investigation records shall be
1035 checked for applicants as an alarm company or alarm company agent.

1036 (5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and
1037 (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
1038 Department of Public Safety with the division's request to:

1039 (a) conduct a search of records of the Department of Public Safety for criminal history
1040 information relating to each applicant for licensure as an alarm company or alarm company
1041 agent and each applicant's officers, directors, shareholders described in Subsection
1042 (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

1043 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
1044 requiring a check of records of the [F.B.I.] Federal Bureau of Investigation for criminal history
1045 information under this section.

1046 (6) The Department of Public Safety shall send to the division:

1047 (a) a written record of criminal history, or certification of no criminal history record, as
1048 contained in the records of the Department of Public Safety in a timely manner after receipt of

1049 a fingerprint card from the division and a request for review of Department of Public Safety
1050 records; and

1051 (b) the results of the [F.B.I.] Federal Bureau of Investigation review concerning an
1052 applicant in a timely manner after receipt of information from the [F.B.I.] Federal Bureau of
1053 Investigation.

1054 (7) (a) The division shall charge each applicant for licensure as an alarm company or
1055 alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of
1056 performing the records reviews under this section.

1057 (b) The division shall pay the Department of Public Safety the costs of all records
1058 reviews, and the Department of Public Safety shall pay the [F.B.I.] Federal Bureau of
1059 Investigation the costs of records reviews under this section.

1060 (8) Information obtained by the division from the reviews of criminal history records of
1061 the Department of Public Safety and the [F.B.I.] Federal Bureau of Investigation shall be used
1062 or disseminated by the division only for the purpose of determining if an applicant for licensure
1063 as an alarm company or alarm company agent is qualified for licensure.

1064 (9) (a) An application for licensure under this chapter shall be denied if:

1065 (i) the applicant has had a previous license, which was issued under this chapter,
1066 suspended or revoked within one year prior to the date of the applicant's application;

1067 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

1068 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
1069 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
1070 status, performing similar functions, or directly or indirectly controlling the applicant has
1071 served in any similar capacity with any person or entity which has had a previous license,
1072 which was issued under this chapter, suspended or revoked within one year prior to the date of
1073 the applicant's application; or

1074 (iii) (A) the applicant is an individual or sole proprietorship; and

1075 (B) any owner or agent acting as a qualifier has served in any capacity listed in
1076 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
1077 this chapter, suspended or revoked within one year prior to the date of the applicant's
1078 application.

1079 (b) An application for licensure under this chapter shall be reviewed by the appropriate

1080 licensing board prior to approval if:

1081 (i) the applicant has had a previous license, which was issued under this chapter,
1082 suspended or revoked more than one year prior to the date of the applicant's application;

1083 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

1084 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
1085 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
1086 status, performing similar functions, or directly or indirectly controlling the applicant has
1087 served in any similar capacity with any person or entity which has had a previous license,
1088 which was issued under this chapter, suspended or revoked more than one year prior to the date
1089 of the applicant's application; or

1090 (iii) (A) the applicant is an individual or sole proprietorship; and

1091 (B) any owner or agent acting as a qualifier has served in any capacity listed in
1092 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
1093 this chapter, suspended or revoked more than one year prior to the date of the applicant's
1094 application.

1095 (10) (a) A licensee that is an unincorporated entity shall file an ownership status report
1096 with the division every 90 days after the day on which the license is issued if the licensee has as
1097 an owner an individual who:

1098 (i) owns an interest in the contractor that is an unincorporated entity;

1099 (ii) owns, directly or indirectly, less than a 8% interest in the unincorporated entity, as
1100 defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah
1101 Administrative Rulemaking Act; and

1102 (iii) engages, or will engage, in a construction trade in Utah as an owner of the
1103 contractor described in Subsection (10)(a)(i).

1104 (b) An ownership status report required under this Subsection (10) shall:

1105 (i) list each addition or deletion of an owner:

1106 (A) for the first ownership status report, after the day on which the unincorporated
1107 entity is licensed under this chapter; and

1108 (B) for a subsequent ownership status report, after the day on which the previous
1109 ownership status report is filed;

1110 (ii) be in a format prescribed by the division that is consistent with a list provided

1111 under Subsection 58-55-302(1)(e)(iv); and
1112 (iii) be accompanied by a fee set by the division in accordance with Section 63J-1-504
1113 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).
1114 (c) The division may audit an ownership status report under this Subsection (10):
1115 (i) in the same manner as the division may audit a demonstration of financial
1116 responsibility under Section 58-55-306; and
1117 (ii) to determine compliance with Subsection 58-55-501(24) or (25) or Subsection
1118 58-55-502(8) or (9).
1119 (11) (a) An unincorporated entity that provides labor to an entity licensed under this
1120 chapter by providing an individual who owns an interest in the unincorporated entity to engage
1121 in a construction trade in Utah shall file with the division:
1122 (i) before the individual who owns an interest in the unincorporated entity engages in a
1123 construction trade in Utah, a current list of the one or more individuals who hold an ownership
1124 interest in the unincorporated entity, that includes for each individual:
1125 (A) the individual's name, address, and Social Security number; and
1126 (B) whether the individual will engage in a construction trade; and
1127 (ii) every 90 days after the day on which the unincorporated entity provides the list
1128 described in Subsection (11)(a)(i), an ownership status report containing the information that
1129 would be required under Subsection (10) if the unincorporated entity were a licensed
1130 contractor.
1131 (b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership
1132 status report described in Subsection (11)(a)(ii) an unincorporated entity shall pay a fee set by
1133 the division in accordance with Section 63J-1-504.
1134 (12) This chapter may not be interpreted to create or support an express or implied
1135 independent contractor relationship between an unincorporated entity described in Subsections
1136 (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax
1137 withholding.
1138 (13) A Social Security number provided under Subsection (1)(e)(iv) is a private record
1139 under Subsection 63G-2-302(1)(h).
1140 Section 8. Section **58-55-306** is amended to read:
1141 **58-55-306. Financial responsibility.**

1142 (1) An applicant for licensure as a contractor, and a licensee applying for renewal or
1143 reinstatement of a contractor's license shall demonstrate to the division and the commission the
1144 applicant's or licensee's financial responsibility before the issuance of or the renewal or
1145 reinstatement of a license by:

1146 (a) (i) completing a questionnaire developed by the division; and
1147 (ii) signing the questionnaire, certifying that the information provided is true and
1148 accurate; or

1149 (b) submitting a bond in an amount and form determined by the commission with the
1150 concurrence of the director.

1151 (2) The division may audit an applicant's or licensee's demonstration of financial
1152 responsibility on a random basis or upon finding of a reasonable need.

1153 (3) The burden to demonstrate financial responsibility is upon the applicant or licensee.

1154 (4) (a) If an applicant for licensure as a contractor or a licensee applying for renewal or
1155 reinstatement of a contractor's license is an unincorporated entity, the division may require each
1156 individual who holds an ownership interest in the applicant or licensee to demonstrate financial
1157 responsibility to the division and the commission.

1158 (b) In accordance with Subsection (2), the division may audit an owner's demonstration
1159 of financial responsibility under Subsection (4)(a) at any time including requesting:

1160 (i) the applicant or licensee to provide a current list of owners meeting the
1161 requirements of Subsection 58-55-302(1)(e)(iv); and

1162 (ii) a credit report for each owner.

1163 (c) If an owner described in Subsection (4)(a) fails to demonstrate financial
1164 responsibility under this section, the division may:

1165 (i) prohibit the licensee from engaging in a construction trade; or

1166 (ii) require the applicant or licensee to submit a bond in an amount and form
1167 determined by the commission with the concurrence of the director.

1168 Section 9. Section **58-55-401** is amended to read:

1169 **58-55-401. Grounds for denial of license and disciplinary proceedings.**

1170 ~~[The]~~ (1) In accordance with Section 58-1-401, the division may:

1171 (a) refuse to issue a license to an applicant;

1172 (b) refuse to renew the license of a licensee;

1173 (c) revoke the right of a licensee to recover from the Residence Lien Recovery Fund
1174 created by Section 38-11-201;

1175 (d) revoke, suspend, restrict, or place on probation the license of a licensee;

1176 (e) issue a public or private reprimand to a licensee; and

1177 (f) issue a cease and desist orders order~~[-, in accordance with Section 58-1-401]~~.

1178 (2) In addition to an action taken under Subsection (1), the division may take an action
1179 described in Subsection 58-1-401(2) in relation to a license as a contractor, if:

1180 (a) the applicant or licensee is an unincorporated entity; and

1181 (b) an individual who holds an ownership interest in the applicant or licensee engages
1182 in:

1183 (i) unlawful conduct as described in Section 58-55-501; or

1184 (ii) unprofessional conduct as described in Section 58-55-502.

1185 Section 10. Section **58-55-501** is amended to read:

1186 **58-55-501. Unlawful conduct.**

1187 Unlawful conduct includes:

1188 (1) engaging in a construction trade, acting as a contractor, an alarm business or
1189 company, or an alarm company agent, or representing oneself to be engaged in a construction
1190 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
1191 person doing any of these is appropriately licensed or exempted from licensure under this
1192 chapter;

1193 (2) acting in a construction trade, as an alarm business or company, or as an alarm
1194 company agent beyond the scope of the license held;

1195 (3) hiring or employing in any manner an unlicensed person, other than an employee
1196 for wages who is not required to be licensed under this chapter, to engage in a construction
1197 trade for which licensure is required or to act as a contractor or subcontractor in a construction
1198 trade requiring licensure;

1199 (4) applying for or obtaining a building permit either for oneself or another when not
1200 licensed or exempted from licensure as a contractor under this chapter;

1201 (5) issuing a building permit to any person for whom there is no evidence of a current
1202 license or exemption from licensure as a contractor under this chapter;

1203 (6) applying for or obtaining a building permit for the benefit of or on behalf of any

- 1204 other person who is required to be licensed under this chapter but who is not licensed or is
1205 otherwise not entitled to obtain or receive the benefit of the building permit;
- 1206 (7) failing to obtain a building permit when required by law or rule;
- 1207 (8) submitting a bid for any work for which a license is required under this chapter by a
1208 person not licensed or exempted from licensure as a contractor under this chapter;
- 1209 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
1210 with an application to obtain or renew a license under this chapter;
- 1211 (10) allowing one's license to be used by another except as provided by statute or rule;
- 1212 (11) doing business under a name other than the name appearing on the license, except
1213 as permitted by statute or rule;
- 1214 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
1215 journeyman plumber, residential journeyman plumber, journeyman electrician, master
1216 electrician, or residential electrician, failing to directly supervise an apprentice under one's
1217 supervision or exceeding the number of apprentices one is allowed to have under ~~[his]~~ the
1218 speciality contractor's supervision;
- 1219 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
1220 funds in payment for a specific project from an owner or any other person, which funds are to
1221 pay for work performed or materials and services furnished for that specific project, and after
1222 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
1223 amounts due and payable to persons who performed work or furnished materials or services
1224 within a reasonable period of time;
- 1225 (14) employing an unlicensed alarm business or company or an unlicensed individual
1226 as an alarm company agent, except as permitted under the exemption from licensure provisions
1227 under Section 58-1-307;
- 1228 (15) if licensed as an alarm company or alarm company agent, filing with the division
1229 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
1230 false or fraudulent and intended to mislead the division in its consideration of the applicant for
1231 licensure;
- 1232 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
1233 (a) the building or construction laws of this state or any political subdivision;
1234 (b) the safety and labor laws applicable to a project;

- 1235 (c) any provision of the health laws applicable to a project;
- 1236 (d) the workers' compensation insurance laws of the state applicable to a project;
- 1237 (e) the laws governing withholdings for employee state and federal income taxes,
- 1238 unemployment taxes, ~~[FICA]~~ Social Security payroll taxes, or other required withholdings; or
- 1239 (f) reporting, notification, and filing laws of this state or the federal government;
- 1240 (17) aiding or abetting any person in evading the provisions of this chapter or rules
- 1241 established under the authority of the division to govern this chapter;
- 1242 (18) engaging in the construction trade or as a contractor for the construction of
- 1243 residences of up to two units when not currently registered or exempt from registration as a
- 1244 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
- 1245 Fund Act;
- 1246 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
- 1247 written contract the notification required in Section 38-11-108;
- 1248 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25;
- 1249 (21) if licensed as a contractor, not completing the approved continuing education
- 1250 required under Section 58-55-302.5;
- 1251 (22) an alarm company allowing an employee with a temporary license under Section
- 1252 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
- 1253 license, as provided in Subsection 58-55-312(3)(a)(ii); ~~[and]~~
- 1254 (23) an alarm company agent under a temporary license under Section 58-55-312
- 1255 engaging in conduct outside the scope of the temporary license, as provided in Subsection
- 1256 58-55-312(3)(a)(ii)~~[-]~~;
- 1257 (24) (a) an unincorporated entity licensed under this chapter having an individual who
- 1258 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
- 1259 lawfully present in the United States; or
- 1260 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
- 1261 providing an individual who owns an interest in the unincorporated entity to engage in a
- 1262 construction trade in Utah while not lawfully present in the United States; or
- 1263 (25) an unincorporated entity failing to provide the following for an individual who
- 1264 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
- 1265 individual who engages, or will engage, in a construction trade in Utah for a separate entity for

1266 which the unincorporated entity provides the individual as labor:

1267 (a) workers' compensation coverage:

1268 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and
1269 Title 34A, Chapter 3, Utah Occupational Disease Act; or

1270 (ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the
1271 unincorporated entity were licensed under this chapter; and

1272 (b) unemployment compensation in accordance with Title 35A, Chapter 4,

1273 Employment Security Act, for an individual who owns, directly or indirectly, less than a 8%

1274 interest in the unincorporated entity, as defined by rule made by the division in accordance with
1275 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1276 Section 11. Section **58-55-502** is amended to read:

1277 **58-55-502. Unprofessional conduct.**

1278 Unprofessional conduct includes:

1279 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed
1280 as a contractor under this chapter;

1281 (2) disregarding or violating through gross negligence or a pattern of negligence:

1282 (a) the building or construction laws of this state or any political subdivision;

1283 (b) the safety and labor laws applicable to a project;

1284 (c) any provision of the health laws applicable to a project;

1285 (d) the workers' compensation insurance laws of this state applicable to a project;

1286 (e) the laws governing withholdings for employee state and federal income taxes,

1287 unemployment taxes, ~~FICA~~ Social Security payroll taxes, or other required withholdings; or

1288 (f) any reporting, notification, and filing laws of this state or the federal government;

1289 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
1290 licensee's direction which causes material injury to another;

1291 (4) contract violations that pose a threat or potential threat to the public health, safety,
1292 and welfare including:

1293 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or

1294 specifications, or abandonment or failure to complete a project without the consent of the

1295 owner or ~~his~~ the owner's duly authorized representative or the consent of any other person

1296 entitled to have the particular project completed in accordance with the plans, specifications,

1297 and contract terms;

1298 (b) failure to deposit funds to the benefit of an employee as required under any written
1299 contractual obligation the licensee has to the employee;

1300 (c) failure to maintain in full force and effect any health insurance benefit to an
1301 employee that was extended as a part of any written contractual obligation or representation by
1302 the licensee, unless the employee is given written notice of the licensee's intent to cancel or
1303 reduce the insurance benefit at least 45 days before the effective date of the cancellation or
1304 reduction;

1305 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section
1306 38-11-207;

1307 (e) failure to provide, when applicable, the information required by Section 38-11-108;
1308 and

1309 (f) willfully or deliberately misrepresenting or omitting a material fact in connection
1310 with an application to claim recovery from the Residence Lien Recovery Fund under Section
1311 38-11-204;

1312 (5) failing as an alarm company to notify the division of the cessation of performance
1313 of its qualifying agent, or failing to replace its qualifying agent as required under Section
1314 58-55-304;

1315 (6) failing as an alarm company agent to carry or display a copy of the licensee's
1316 license as required under Section 58-55-311; [~~or~~]

1317 (7) failing to comply with operating standards established by rule in accordance with
1318 Section 58-55-308[-];

1319 (8) an unincorporated entity licensed under this chapter having an individual who owns
1320 an interest in the unincorporated entity engage in a construction trade in Utah while not
1321 lawfully present in the United States; or

1322 (9) an unincorporated entity failing to provide the following for an individual who
1323 engages, or will engage, in a construction trade in Utah for the unincorporated entity:

1324 (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2,
1325 Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

1326 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
1327 Employment Security Act, for an individual who owns, directly or indirectly, less than a 8%

1328 interest in the unincorporated entity, as defined by rule made by the division in accordance with
1329 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1330 Section 12. Section **58-55-503** is amended to read:

1331 **58-55-503. Penalty for unlawful conduct -- Citations.**

1332 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
1333 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), [or] (23), (24), or (25), or Subsection
1334 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is
1335 guilty of a class A misdemeanor.

1336 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
1337 individual and does not include a sole proprietorship, joint venture, corporation, limited
1338 liability company, association, or organization of any type.

1339 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
1340 awarded and may not accept a contract for the performance of the work.

1341 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
1342 infraction unless the violator did so with the intent to deprive the person to whom money is to
1343 be paid of the money received, in which case the violator is guilty of theft, as classified in
1344 Section 76-6-412.

1345 (3) Grounds for immediate suspension of the licensee's license by the division and the
1346 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
1347 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
1348 report to, or notify the division with respect to any matter for which application, notification, or
1349 reporting is required under this chapter or rules adopted under this chapter, including applying
1350 to the division for a new license to engage in a new specialty classification or to do business
1351 under a new form of organization or business structure, filing with the division current
1352 financial statements, notifying the division concerning loss of insurance coverage, or change in
1353 qualifier.

1354 (4) (a) If upon inspection or investigation, the division concludes that a person has
1355 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
1356 (10), (12), (14), (19), (21), (22), [or] (23), (24), or (25), or Subsection 58-55-504(2), or any rule
1357 or order issued with respect to these subsections, and that disciplinary action is appropriate, the
1358 director or the director's designee from within the division shall promptly issue a citation to the

1359 person according to this chapter and any pertinent rules, attempt to negotiate a stipulated
1360 settlement, or notify the person to appear before an adjudicative proceeding conducted under
1361 Title 63G, Chapter 4, Administrative Procedures Act.

1362 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
1363 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), ~~[or] (23), (24), or (25)~~,
1364 or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or
1365 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
1366 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from
1367 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),
1368 ~~[or] (21), (24), or (25)~~, or Subsection 58-55-504(2).

1369 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1370 58-55-401 may not be assessed through a citation.

1371 ~~[(iii) (A) A person who receives a citation or is fined for violating Subsection
1372 58-55-501(21) may also be issued a cease and desist order from engaging in work to be
1373 performed by a contractor licensed under this chapter unless the person meets the continuing
1374 education requirement within 30 days after receipt of the citation or fine.]~~

1375 ~~[(B) The order, if issued, shall be removed upon the person's completion of the
1376 continuing education requirement.]~~

1377 ~~[(C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.]~~

1378 (b) (i) ~~[Each]~~ A citation shall be in writing and describe with particularity the nature of
1379 the violation, including a reference to the provision of the chapter, rule, or order alleged to have
1380 been violated.

1381 (ii) ~~[The]~~ A citation shall clearly state that the recipient must notify the division in
1382 writing within 20 calendar days of service of the citation if the recipient wishes to contest the
1383 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1384 (iii) ~~[The]~~ A citation shall clearly explain the consequences of failure to timely contest
1385 the citation or to make payment of any fines assessed by the citation within the time specified
1386 in the citation.

1387 (c) ~~[Each]~~ A citation issued under this section, or a copy of ~~[each]~~ a citation, may be
1388 served upon a person upon whom a summons may be served:

1389 (i) in accordance with the Utah Rules of Civil Procedure;

1390 (ii) personally or upon the person's agent by a division investigator or by a person
1391 specially designated by the director; or

1392 (iii) by mail.

1393 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
1394 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1395 final order of the division and is not subject to further agency review.

1396 (ii) The period to contest a citation may be extended by the division for cause.

1397 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
1398 the license of a licensee who fails to comply with a citation after it becomes final.

1399 (f) The failure of an applicant for licensure to comply with a citation after it becomes
1400 final is a ground for denial of license.

1401 (g) ~~[No]~~ A citation may not be issued under this section after the expiration of six
1402 months following the occurrence of ~~[any]~~ a violation.

1403 (h) ~~[Fines shall be assessed by the]~~ The director or the director's designee ~~[according~~
1404 ~~to]~~ shall assess a fine in accordance with the following:

1405 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

1406 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

1407 and

1408 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
1409 \$2,000 for each day of continued offense.

1410 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
1411 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

1412 (A) the division previously issued a final order determining that a person committed a
1413 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
1414 (3), (9), (10), (12), (14), ~~[or]~~ (19), (24), or (25), or Subsection 58-55-504(2); or

1415 (B) (I) the division initiated an action for a first or second offense;

1416 (II) ~~[no]~~ a final order has not been issued by the division in the action initiated under
1417 Subsection (4)(i)(i)(B)(I);

1418 (III) the division determines during an investigation that occurred after the initiation of
1419 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
1420 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),

1421 (10), (12), (14), [~~or~~] (19), (24), or (25), or Subsection 58-55-504(2); and

1422 (IV) after determining that the person committed a second or subsequent offense under
1423 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
1424 Subsection (4)(i)(i)(B)(I).

1425 (ii) In issuing a final order for a second or subsequent offense under Subsection
1426 (4)(i)(i), the division shall comply with the requirements of this section.

1427 (j) In addition to any other licensure sanction or fine imposed under this section, the
1428 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
1429 two or more times within a 12-month period, unless, with respect to a violation of Subsection
1430 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
1431 legal working status of the individual who was the subject of the violation using a status
1432 verification system, as defined in Section 13-47-102.

1433 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)
1434 for each individual is considered a separate violation.

1435 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
1436 into the Commerce Service Account created by Section 13-1-2.

1437 (b) A penalty [~~which~~] that is not paid may be collected by the director by either
1438 referring the matter to a collection agency or bringing an action in the district court of the
1439 county in which the person against whom the penalty is imposed resides or in the county where
1440 the office of the director is located.

1441 (c) A county attorney or the attorney general of the state is to provide legal assistance
1442 and advice to the director in any action to collect the penalty.

1443 (d) In an action brought to enforce the provisions of this section, reasonable [~~attorney's~~]
1444 attorney fees and costs shall be awarded.

1445 Section 13. Section **63G-2-302** is amended to read:

1446 **63G-2-302. Private records.**

1447 (1) The following records are private:

1448 (a) records concerning an individual's eligibility for unemployment insurance benefits,
1449 social services, welfare benefits, or the determination of benefit levels;

1450 (b) records containing data on individuals describing medical history, diagnosis,
1451 condition, treatment, evaluation, or similar medical data;

1452 (c) records of publicly funded libraries that when examined alone or with other records
1453 identify a patron;

1454 (d) records received by or generated by or for:

1455 (i) the Independent Legislative Ethics Commission, except for:

1456 (A) the commission's summary data report that is required under legislative rule; and

1457 (B) any other document that is classified as public under legislative rule; or

1458 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
1459 unless the record is classified as public under legislative rule;

1460 (e) records received or generated for a Senate confirmation committee concerning
1461 character, professional competence, or physical or mental health of an individual:

1462 (i) if prior to the meeting, the chair of the committee determines release of the records:

1463 (A) reasonably could be expected to interfere with the investigation undertaken by the
1464 committee; or

1465 (B) would create a danger of depriving a person of a right to a fair proceeding or
1466 impartial hearing; and

1467 (ii) after the meeting, if the meeting was closed to the public;

1468 (f) employment records concerning a current or former employee of, or applicant for

1469 employment with, a governmental entity that would disclose that individual's home address,

1470 home telephone number, Social Security number, insurance coverage, marital status, or payroll
1471 deductions;

1472 (g) records or parts of records under Section 63G-2-303 that a current or former
1473 employee identifies as private according to the requirements of that section;

1474 (h) that part of a record indicating a person's Social Security number or federal

1475 employer identification number if provided under Section 31A-23a-104, 31A-25-202,

1476 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

1477 (i) that part of a voter registration record identifying a voter's driver license or

1478 identification card number, Social Security number, or last four digits of the Social Security
1479 number;

1480 (j) a record that:

1481 (i) contains information about an individual;

1482 (ii) is voluntarily provided by the individual; and

- 1483 (iii) goes into an electronic database that:
- 1484 (A) is designated by and administered under the authority of the Chief Information
- 1485 Officer; and
- 1486 (B) acts as a repository of information about the individual that can be electronically
- 1487 retrieved and used to facilitate the individual's online interaction with a state agency;
- 1488 (k) information provided to the Commissioner of Insurance under:
- 1489 (i) Subsection 31A-23a-115(2)(a);
- 1490 (ii) Subsection 31A-23a-302(3); or
- 1491 (iii) Subsection 31A-26-210(3);
- 1492 (l) information obtained through a criminal background check under Title 11, Chapter
- 1493 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 1494 (m) information provided by an offender that is:
- 1495 (i) required by the registration requirements of Section 77-27-21.5; and
- 1496 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);
- 1497 and
- 1498 (n) a statement and any supporting documentation filed with the attorney general in
- 1499 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 1500 homeland security.
- 1501 (2) The following records are private if properly classified by a governmental entity:
- 1502 (a) records concerning a current or former employee of, or applicant for employment
- 1503 with a governmental entity, including performance evaluations and personal status information
- 1504 such as race, religion, or disabilities, but not including records that are public under Subsection
- 1505 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);
- 1506 (b) records describing an individual's finances, except that the following are public:
- 1507 (i) records described in Subsection 63G-2-301(2);
- 1508 (ii) information provided to the governmental entity for the purpose of complying with
- 1509 a financial assurance requirement; or
- 1510 (iii) records that must be disclosed in accordance with another statute;
- 1511 (c) records of independent state agencies if the disclosure of those records would
- 1512 conflict with the fiduciary obligations of the agency;
- 1513 (d) other records containing data on individuals the disclosure of which constitutes a

1514 clearly unwarranted invasion of personal privacy;

1515 (e) records provided by the United States or by a government entity outside the state
1516 that are given with the requirement that the records be managed as private records, if the
1517 providing entity states in writing that the record would not be subject to public disclosure if
1518 retained by it; and

1519 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
1520 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
1521 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

1522 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
1523 records, statements, history, diagnosis, condition, treatment, and evaluation.

1524 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
1525 doctors, or affiliated entities are not private records or controlled records under Section
1526 63G-2-304 when the records are sought:

1527 (i) in connection with any legal or administrative proceeding in which the patient's
1528 physical, mental, or emotional condition is an element of any claim or defense; or

1529 (ii) after a patient's death, in any legal or administrative proceeding in which any party
1530 relies upon the condition as an element of the claim or defense.

1531 (c) Medical records are subject to production in a legal or administrative proceeding
1532 according to state or federal statutes or rules of procedure and evidence as if the medical
1533 records were in the possession of a nongovernmental medical care provider.

1534 Section 14. Section **63G-11-104** is amended to read:

1535 **63G-11-104. Receipt of state, local, or federal public benefits -- Verification --**
1536 **Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

1537 (1) As used in this section, "federal program" means the Systematic Alien Verification
1538 for Entitlements Program operated by the United States Department of Homeland Security or
1539 an equivalent program designated by the Department of Homeland Security.

1540 (2) (a) Except as provided in Subsection (4) or when exempted by federal law, an
1541 agency or political subdivision of the state shall verify the lawful presence in the United States
1542 of an individual at least 18 years of age who applies for:

1543 [~~(a)~~] (i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

1544 [~~(b)~~] (ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered

1545 by an agency or political subdivision of this state.

1546 (b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction
1547 Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of
1548 Commerce shall verify in accordance with this Subsection (2) the lawful presence in the United
1549 States of each individual who:

1550 (i) owns an interest in the contractor that is an unincorporated entity; and

1551 (ii) engages, or will engage, in a construction trade in Utah as an owner of the
1552 contractor described in Subsection (2)(b)(i).

1553 (3) This section shall be enforced without regard to race, religion, gender, ethnicity, or
1554 national origin.

1555 (4) Verification of lawful presence under this section is not required for:

1556 (a) any purpose for which lawful presence in the United States is not restricted by law,
1557 ordinance, or regulation;

1558 (b) assistance for health care items and services that:

1559 (i) are necessary for the treatment of an emergency medical condition, as defined in 42
1560 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

1561 (ii) are not related to an organ transplant procedure;

1562 (c) short-term, noncash, in-kind emergency disaster relief;

1563 (d) public health assistance for immunizations with respect to immunizable diseases
1564 and for testing and treatment of symptoms of communicable diseases whether or not the
1565 symptoms are caused by the communicable disease;

1566 (e) programs, services, or assistance such as soup kitchens, crisis counseling and
1567 intervention, and short-term shelter, specified by the United States Attorney General, in the
1568 sole and unreviewable discretion of the United States Attorney General after consultation with
1569 appropriate federal agencies and departments, that:

1570 (i) deliver in-kind services at the community level, including through public or private
1571 nonprofit agencies;

1572 (ii) do not condition the provision of assistance, the amount of assistance provided, or
1573 the cost of assistance provided on the income or resources of the individual recipient; and

1574 (iii) are necessary for the protection of life or safety;

1575 (f) the exemption for paying the nonresident portion of total tuition as set forth in

1576 Section 53B-8-106;

1577 (g) an applicant for a license under Section 61-1-4, if the applicant:

1578 (i) is registered with the Financial Industry Regulatory Authority; and

1579 (ii) files an application with the state Division of Securities through the Central

1580 Registration Depository;

1581 (h) a state public benefit to be given to an individual under Title 49, Utah State

1582 Retirement and Insurance Benefit Act;

1583 (i) a home loan that will be insured, guaranteed, or purchased by:

1584 (i) the Federal Housing Administration, the Veterans Administration, or any other

1585 federal agency; or

1586 (ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

1587 (j) a subordinate loan or a grant that will be made to an applicant in connection with a

1588 home loan that does not require verification under Subsection (4)(i); and

1589 (k) an applicant for a license issued by the Department of Commerce or individual

1590 described in Subsection (2)(b), if the applicant or individual provides the Department of

1591 Commerce:

1592 (i) certification, under penalty of perjury, that the applicant or individual is:

1593 (A) a United States citizen;

1594 (B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

1595 (C) lawfully present in the United States; and

1596 [~~(ii) a valid driver license number for a driver license issued by:~~]

1597 [~~(A) Utah; or~~]

1598 (ii) the number for a driver license or identification card issued:

1599 (A) under Title 53, Chapter 3, Uniform Driver License Act; or

1600 (B) by a state other than Utah that as part of issuing the driver license or identification

1601 card verifies an individual's lawful presence in the United States.

1602 (5) An agency or political subdivision required to verify the lawful presence in the

1603 United States of an applicant under this section shall require the applicant to certify under

1604 penalty of perjury that:

1605 (a) the applicant is a United States citizen; or

1606 (b) the applicant is:

- 1607 (i) a qualified alien as defined in 8 U.S.C. Sec. 1641; and
1608 (ii) lawfully present in the United States.
- 1609 (6) An agency or political subdivision shall verify a certification required under
1610 Subsection (5)(b) through the federal program.
- 1611 (7) (a) An individual who knowingly and willfully makes a false, fictitious, or
1612 fraudulent statement or representation in a certification under Subsection (4)(k) or (5) is subject
1613 to the criminal penalties applicable in this state for:
- 1614 (i) making a written false statement under Subsection 76-8-504(2); and
1615 (ii) fraudulently obtaining:
- 1616 (A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or
1617 (B) unemployment compensation under Section 76-8-1301.
- 1618 (b) If the certification constitutes a false claim of United States citizenship under 18
1619 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United
1620 States Attorney General for the applicable district based upon the venue in which the
1621 application was made.
- 1622 (8) An agency or political subdivision may adopt variations to the requirements of this
1623 section that:
- 1624 (a) clearly improve the efficiency of or reduce delay in the verification process; or
1625 (b) provide for adjudication of unique individual circumstances where the verification
1626 procedures in this section would impose an unusual hardship on a legal resident of Utah.
- 1627 (9) It is unlawful for an agency or a political subdivision of this state to provide a state,
1628 local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.
- 1629 (10) A state agency or department that administers a program of state or local public
1630 benefits shall:
- 1631 (a) provide an annual report to the governor, the president of the Senate, and the
1632 speaker of the House regarding its compliance with this section; and
- 1633 (b) (i) monitor the federal program for application verification errors and significant
1634 delays;
- 1635 (ii) provide an annual report on the errors and delays to ensure that the application of
1636 the federal program is not erroneously denying a state or local benefit to a legal resident of the
1637 state; and

1638 (iii) report delays and errors in the federal program to the United States Department of
1639 Homeland Security.

1640 Section 15. **Effective date.**

1641 This bill takes effect on July 1, 2011.