

1 **CONTRACTOR EMPLOYEE AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Don L. Ipson

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions that relate to hiring and compensation requirements for a
10 person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies that unlawful conduct includes hiring or otherwise compensating an
14 unlicensed person to perform work on a project, unless the person:
- 15 • is an employee of a licensee for wages; and
 - 16 • is not required to be licensed under Title 58, Chapter 55, Utah Construction
17 Trades Licensing Act;
- 18 ▶ requires a licensee to provide a pay statement to an individual each time the licensee
19 pays the individual for work performed;
- 20 ▶ provides enforcement and penalty mechanisms for the provisions of this bill; and
- 21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **34-28-3**, as last amended by Laws of Utah 2008, Chapter 254
- 29 **34-28-9**, as last amended by Laws of Utah 1997, Chapter 375
- 30 **34-28-10**, as last amended by Laws of Utah 1997, Chapter 375
- 31 **34-28-19**, as last amended by Laws of Utah 2008, Chapter 382
- 32 **58-55-501**, as last amended by Laws of Utah 2013, Chapter 57
- 33 **58-55-503**, as last amended by Laws of Utah 2013, Chapter 57

34 ENACTS:

35 **58-55-605**, Utah Code Annotated 1953



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

38 Section 1. Section **34-28-3** is amended to read:

39 **34-28-3. Regular paydays -- Currency or negotiable checks required -- Deposit in**
40 **financial institution -- Statement of total deductions -- Unlawful withholding or diversion**
41 **of wages.**

42 (1) (a) An employer shall pay the wages earned by an employee at regular intervals, but
43 in periods no longer than semimonthly on days to be designated in advance by the employer as
44 the regular payday.

45 (b) An employer shall pay for services rendered during a pay period within 10 days
46 after the close of that pay period.

47 (c) If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay
48 wages earned during the pay period on the day preceding the Saturday, Sunday, or legal
49 holiday.

50 (d) If an employer hires an employee on a yearly salary basis, the employer may pay the
51 employee on a monthly basis by paying on or before the seventh of the month following the
52 month for which services are rendered.

53 (e) Wages shall be paid in full to an employee:

54 (i) in lawful money of the United States;

55 (ii) by a check or draft on a depository institution, as defined in Section **7-1-103**, that is
56 convertible into cash on demand at full face value; or

57 (iii) by electronic transfer to the depository institution designated by the employee.

58 (2) An employer may not issue in payment of wages due or as an advance on wages to

59 be earned for services performed or to be performed within this state an order, check, or draft
60 unless:

61 (a) it is negotiable and payable in cash, on demand, without discount, at a depository
62 institution; and

63 (b) the name and address of the depository institution appears on the instrument.

64 (3) (a) Except as provided in Subsection (3)(b), an employee may refuse to have the
65 employee's wages deposited by electronic transfer under Subsection (1)(e)(iii) by filing a
66 written request with the employer.

67 (b) An employee may not refuse to have the employee's wages deposited by electronic
68 transfer under Subsection (3)(a) if:

69 (i) for the calendar year preceding the pay period for which the employee is being paid,
70 the employer's federal employment tax deposits are equal to or in excess of \$250,000; and

71 (ii) at least two-thirds of the employees of the employer have their wages deposited by
72 electronic transfer.

73 (c) An employer may not designate a particular depository institution for the exclusive
74 payment or deposit of a check or draft for wages.

75 (4) If a deduction is made from the wages paid, the employer shall, on each regular
76 payday, furnish the employee with a statement showing the total amount of each deduction.

77 (5) An employer licensed under Title 58, Chapter 55, Utah Construction Trades
78 Licensing Act, shall:

79 (a) on the day on which the employer pays an employee, give the employee a written or
80 electronic pay statement that states:

81 (i) the employee's name;

82 (ii) the employee's \hat{S} → base ← \hat{S} rate of pay;

83 (iii) the dates of the pay period for which the individual is being paid;

84 (iv) \hat{H} → if paid hourly, ← \hat{H} the number of hours the employee worked during
84a the pay period;

85 (v) the amount of and reason for any money withheld in accordance with state or
86 federal law, including:

87 (A) state and federal income tax;

88 (B) Social Security tax;

89 (C) Medicare tax; and

90 (D) court-ordered withholdings; and
91 (vi) the total amount paid to the employee for that pay period; and
92 (b) comply with the requirements described in Subsection (5)(a) regardless of whether
93 the employer pays the employee by check, cash, or other means.

94 ~~[(5)]~~ (6) An employer may not withhold or divert part of an employee's wages unless:

95 (a) the employer is required to withhold or divert the wages by:

96 (i) court order; or

97 (ii) state or federal law;

98 (b) the employee expressly authorizes the deduction in writing;

99 (c) the employer presents evidence that in the opinion of a hearing officer or an

100 administrative law judge would warrant an offset; or

101 (d) subject to Subsection ~~[(7)]~~ (8), the employer withholds or diverts the wages:

102 (i) as a contribution of the employee under a contract or plan that is:

103 (A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code;

104 and

105 (B) established by the employer; and

106 (ii) the contract or plan described in Subsection ~~[(5)]~~ (6)(d)(i) provides that an

107 employee's compensation is reduced by a specified contribution:

108 (A) under the contract or plan; and

109 (B) that is made for the employee unless the employee affirmatively elects:

110 (I) to not have a reduction made as a contribution by the employee under the contract

111 or plan; or

112 (II) to have a different amount be contributed by the employee under the contract or

113 plan.

114 ~~[(6)]~~ (7) An employer may not require an employee to rebate, refund, offset, or return a

115 part of the wage, salary, or compensation to be paid to the employee except as provided in

116 Subsection ~~[(5)]~~ (6).

117 ~~[(7)]~~ (8) (a) An employer shall notify an employee in writing of the right to make an

118 election under Subsection ~~[(5)]~~ (6)(d).

119 (b) An employee may make an election described in Subsection ~~[(5)]~~ (6)(d) at any time

120 by providing the employer written notice of the election.

121 (c) An employer shall modify or terminate the withholding or diversion described in
 122 Subsection ~~[(5)]~~ (6)(d) beginning with a pay period that begins no later than 30 days following
 123 the day on which the employee provides the employer the written notice described in
 124 Subsection ~~[(7)]~~ (8)(b).

125 ~~[(8)]~~ (9) An employer is not prohibited from pursuing legitimate claims of damages,
 126 offsets, or recoupments in a civil action against an employee.

127 Section 2. Section 34-28-9 is amended to read:

128 **34-28-9. Enforcement of chapter -- Rulemaking authority.**

129 (1) (a) The division shall:

130 (i) ensure compliance with this chapter;

131 (ii) investigate any alleged violations of this chapter; and

132 (iii) determine the validity of ~~[any]~~ a claim for any violation of this chapter that is filed
 133 with ~~[(it)]~~ the division by an employee.

134 (b) The commission may make rules consistent with this chapter governing wage
 135 claims and payment of wages.

136 (c) The minimum wage claim that the division may accept is \$50.

137 (d) The maximum wage claim that the division may accept is \$10,000.

138 (e) ~~[The]~~ A wage claim shall be filed within one year ~~[of the date]~~ after the day on
 139 which the wages were earned.

140 (2) (a) The division may assess against an employer who fails to pay an employee in
 141 accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee
 142 which shall be assessed daily until paid for a period not to exceed 20 days.

143 (b) The division shall:

144 (i) retain 50% of the money received from ~~[the]~~ a penalty ~~[payments]~~ payment under
 145 Subsection (2)(a) for the costs of administering this chapter;

146 (ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and

147 (iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.

148 (c) Subsections (2)(a) and (b) do not apply to a violation of Subsection 34-28-3(5).

149 (3) (a) A person who violates Subsection 34-28-3(5) is subject to a civil fine of:

150 (i) \$50 for the first violation within a one-year period;

151 (ii) \$100 for the second violation within a one-year period;

152 (iii) \$100 for the third violation within a one-year period; and
153 (iv) \$500 for the fourth violation and each subsequent violation within a one-year
154 period.

155 (b) The division shall deposit the money that the division receives under Subsection
156 (3)(a) into the General Fund as a dedicated credit to the division to pay for the costs of
157 administering this chapter.

158 ~~[(3)]~~ (4) (a) An abstract of any final award under this section may be filed in the office
159 of the clerk of the district court of any county in the state. If so filed, ~~[it]~~ the abstract shall be
160 docketed in the judgment docket of that district court.

161 (b) The time of the receipt of the abstract shall be noted by the clerk and entered in the
162 judgment docket.

163 (c) ~~[H]~~ Unless the award was previously satisfied, if an abstract is filed and docketed,
164 the award constitutes a lien [from the time of the docketing] upon the employer's real property
165 [of the employer] that is situated in the county in which the abstract is filed for a period of eight
166 years [from the date of the award unless previously satisfied] after the day on which the award
167 is granted.

168 (d) Execution may be issued on the award within the same time and in the same
169 manner and with the same effect as if the award were a judgment of the district court.

170 ~~[(4)]~~ (5) (a) The commission may employ counsel, appoint a representative, or request
171 the attorney general, or the county attorney for the county in which ~~[the plaintiff or the~~
172 ~~defendant resides, depending on the district in which]~~ the final award is filed and docketed, to
173 represent the commission on all appeals and to enforce judgments.

174 (b) The counsel employed by the commission, the attorney general, or the county
175 representing the commission, shall be awarded:

- 176 (i) reasonable ~~[attorneys']~~ attorney fees, as specified by the commission; and
177 (ii) costs for:
178 (A) appeals when the plaintiff prevails; and
179 (B) judgment enforcement proceedings.

180 ~~[(5)]~~ (6) (a) The commission may enter into reciprocal agreements with the labor
181 department or a corresponding agency of any other state or with the person, board, officer, or
182 commission authorized to act on behalf of that department or agency, for the collection in any

183 other state of claims or judgments for wages and other demands based upon claims previously
184 assigned to the commission.

185 (b) The commission may, to the extent provided by any reciprocal agreement entered
186 into under Subsection [~~(5)~~] (6)(a), or by the laws of any other state, maintain actions in the
187 courts of the other states for the collection of any claims for wages, judgments, and other
188 demands and may assign the claims, judgments, and demands to the labor department or an
189 agency of any other state for collection to the extent that may be permitted or provided by the
190 laws of that state or by reciprocal agreement.

191 (c) The commission may maintain actions in the courts of this state upon assigned
192 claims for wages, judgments, and demands arising in any other state in the same manner and to
193 the same extent that the actions by the commission are authorized when arising in this state if:

194 (i) the labor department or [~~other~~] a corresponding agency of any other state or of any
195 person, board, officer, or commission of that state authorized to act on behalf of the labor
196 department or corresponding agency requests in writing that the commission commence and
197 maintain the action; and

198 (ii) the other state by legislation or reciprocal agreement extends the same comity to
199 this state.

200 Section 3. Section **34-28-10** is amended to read:

201 **34-28-10. Employers' records -- Inspection by division.**

202 (1) (a) Every employer shall keep a true and accurate record of time worked and wages
203 paid each pay period to each employee who is employed on an hourly or a daily basis in the
204 form required by the commission rules.

205 (b) The employer shall keep the records on file for at least one year after the entry of
206 the record.

207 (2) An employer licensed under Title 58, Chapter 55, Utah Construction Trades
208 Licensing Act, shall retain a copy of each pay statement described in Subsection [34-28-3\(5\)](#) for
209 at least three years after the day on which the employer gives a copy of the pay statement to the
210 employee.

211 [~~(2)~~] (3) The director of the division or the director's designee may enter any place of
212 employment during business hours to inspect the records described in this section and to ensure
213 compliance with this section.

214 [~~3~~] (4) Any effort of any employer to obstruct the commission in the performance of
215 its duties is considered to be a violation of this chapter and may be punished as any other
216 violation of this chapter.

217 Section 4. Section **34-28-19** is amended to read:

218 **34-28-19. Retaliation prohibited -- Administrative process -- Enforcement --**
219 **Rulemaking.**

220 (1) (a) An employer violates this chapter if the employer takes an action described in
221 Subsection (1)(b) against an employee because:

222 (i) the employee files a complaint or testifies in a proceeding relative to the
223 enforcement of this chapter;

224 (ii) the employee is going to file a complaint or testify in a proceeding relative to the
225 enforcement of this chapter; or

226 (iii) the employer believes that the employee may file a complaint or testify in any
227 proceeding relative to the enforcement of this chapter.

228 (b) Subsection (1)(a) applies to the following actions of an employer:

229 (i) the discharge of an employee;

230 (ii) the demotion of an employee; or

231 (iii) any other form of retaliation against an employee in the terms, privileges, or
232 conditions of employment.

233 (2) (a) An employee claiming to be aggrieved by an action of the employer in violation
234 of Subsection (1) may file with the division a request for agency action.

235 (b) On receipt of a request for agency action under Subsection (2)(a), the division:

236 (i) shall conduct an adjudicative proceeding pursuant to Title 63G, Chapter 4,
237 Administrative Procedures Act; and

238 (ii) may attempt to reach a settlement between the parties through a settlement
239 conference.

240 (3) If the division determines that a violation has occurred, the division may require the
241 employer to:

242 (a) cease and desist any retaliatory action;

243 (b) compensate the employee, which compensation may not exceed reimbursement for,
244 and payment of, lost wages and benefits to the employee; or

245 (c) do both (3)(a) and (b).

246 (4) The division may enforce this section in accordance with Subsections ~~34-28-9~~[(3)]
 247 ~~(4)~~ and ~~[(4)]~~ (5).

248 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 249 commission shall adopt rules, as required, to implement this section.

250 Section 5. Section **58-55-501** is amended to read:

251 **58-55-501. Unlawful conduct.**

252 Unlawful conduct includes:

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

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

260 ~~[(3) hiring or employing in any manner an unlicensed person, other than an employee
 261 for wages who is not required to be licensed under this chapter, to engage in a construction
 262 trade for which licensure is required or to act as a contractor or subcontractor in a construction
 263 trade requiring licensure;]~~

264 (3) hiring or ~~H~~→ [otherwise compensating] employing ←~~H~~ a person who is not licensed
 264a under this chapter to
 265 perform work on a project, unless the person:

266 (a) is an employee of a person licensed under this chapter for wages; and

267 (b) is not required to be licensed under this chapter;

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

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

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

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

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

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

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

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

283 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
284 journeyman plumber, residential journeyman plumber, journeyman electrician, master
285 electrician, or residential electrician, failing to directly supervise an apprentice under one's
286 supervision or exceeding the number of apprentices one is allowed to have under the speciality
287 contractor's supervision;

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

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

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

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

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

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

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

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

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

- 307 unemployment taxes, Social Security payroll taxes, or other required withholdings; or
- 308 (f) reporting, notification, and filing laws of this state or the federal government;
- 309 (17) aiding or abetting any person in evading the provisions of this chapter or rules
- 310 established under the authority of the division to govern this chapter;
- 311 (18) engaging in the construction trade or as a contractor for the construction of
- 312 residences of up to two units when not currently registered or exempt from registration as a
- 313 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
- 314 Fund Act;
- 315 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
- 316 written contract the notification required in Section 38-11-108;
- 317 (20) wrongfully filing a preconstruction or construction lien in violation of Section
- 318 38-1a-308;
- 319 (21) if licensed as a contractor, not completing the approved continuing education
- 320 required under Section 58-55-302.5;
- 321 (22) an alarm company allowing an employee with a temporary license under Section
- 322 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
- 323 license, as provided in Subsection 58-55-312(3)(a)(ii);
- 324 (23) an alarm company agent under a temporary license under Section 58-55-312
- 325 engaging in conduct outside the scope of the temporary license, as provided in Subsection
- 326 58-55-312(3)(a)(ii);
- 327 (24) (a) an unincorporated entity licensed under this chapter having an individual who
- 328 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
- 329 lawfully present in the United States; or
- 330 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
- 331 providing an individual who owns an interest in the unincorporated entity to engage in a
- 332 construction trade in Utah while not lawfully present in the United States;
- 333 (25) an unincorporated entity failing to provide the following for an individual who
- 334 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
- 335 individual who engages, or will engage, in a construction trade in Utah for a separate entity for
- 336 which the unincorporated entity provides the individual as labor:
- 337 (a) workers' compensation coverage:

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

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

342 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
343 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
344 interest in the unincorporated entity, as defined by rule made by the division in accordance with
345 Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

346 (26) the failure of a sign installation contractor or nonelectrical outdoor advertising
347 sign contractor, as classified and defined in division rules, to:

348 (a) display the contractor's license number prominently on a vehicle that:

349 (i) the contractor uses; and

350 (ii) displays the contractor's business name; or

351 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
352 at a job site, whether or not the vehicle is owned by the contractor;

353 (27) (a) an unincorporated entity licensed under this chapter having an individual who
354 owns an interest in the unincorporated entity engage in a construction trade in the state while
355 the individual is using a Social Security number that does not belong to that individual; or

356 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
357 providing an individual, who owns an interest in the unincorporated entity, to engage in a
358 construction trade in the state while the individual is using a Social Security number that does
359 not belong to that individual; [or]

360 (28) a contractor failing to comply with a requirement imposed by a political
361 subdivision, state agency, or board of education under Section [58-55-310](#)[-]; or

362 (29) failing to timely comply with the requirements described in Section [58-55-605](#).

363 Section 6. Section **58-55-503** is amended to read:

364 **58-55-503. Penalty for unlawful conduct -- Citations.**

365 (1) (a) (i) A person who violates Subsection [58-55-308](#)(2), Subsection [58-55-501](#)(1),
366 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), [or] (28), or
367 (29), or Subsection [58-55-504](#)(2), or who fails to comply with a citation issued under this
368 section after it is final, is guilty of a class A misdemeanor.

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

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

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

378 (3) Grounds for immediate suspension of ~~the~~ a licensee's license by the division and
379 the commission include:

380 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section
381 58-55-501, or Subsection 58-55-504(2)~~;~~ and

382 (b) the failure by a licensee to make application to, report to, or notify the division with
383 respect to any matter for which application, notification, or reporting is required under this
384 chapter or rules adopted under this chapter, including:

385 (i) applying to the division for a new license to engage in a new specialty classification
386 or to do business under a new form of organization or business structure~~;~~;

387 (ii) filing ~~[with the division]~~ a current financial ~~[statements,]~~ statement with the
388 division; and

389 (iii) notifying the division concerning loss of insurance coverage~~;~~ or change in
390 qualifier.

391 (4) (a) If upon inspection or investigation, the division concludes that a person has
392 violated the provisions of Subsection 58-55-308(2) ~~[or Subsections]~~, Subsection 58-55-501(1),
393 (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), ~~[or]~~ (28), or (29),
394 Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that
395 disciplinary action is appropriate, the director or the director's designee from within the
396 division shall promptly issue a citation to the person according to this chapter and any pertinent
397 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an
398 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

399 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),

400 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
401 (27), ~~or~~ (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a
402 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be
403 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered
404 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),
405 (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), ~~or~~ (28), or (29), or Subsection
406 58-55-504(2).

407 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
408 58-55-401 may not be assessed through a citation.

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

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

415 (iii) A citation shall clearly explain the consequences of failure to timely contest the
416 citation or to make payment of any fines assessed by the citation within the time specified in
417 the citation.

418 (c) A citation issued under this section, or a copy of a citation, may be served upon a
419 person upon whom a summons may be served:

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

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

423 (iii) by mail.

424 (d) (i) If within 20 calendar days ~~[from the service of]~~ after the day on which a citation
425 is served, the person to whom the citation was issued fails to request a hearing to contest the
426 citation, the citation becomes the final order of the division and is not subject to further agency
427 review.

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

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

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

433 (g) A citation may not be issued under this section after the expiration of six months
434 following the occurrence of a violation.

435 (h) The director or the director's designee shall assess a fine in accordance with the
436 following:

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

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

439 and

440 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
441 \$2,000 for each day of continued offense.

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

444 (A) the division previously issued a final order determining that a person committed a
445 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
446 (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), [or] (28), or (29), or Subsection
447 58-55-504(2); or

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

449 (II) a final order has not been issued by the division in the action initiated under
450 Subsection (4)(i)(i)(B)(I);

451 (III) the division determines during an investigation that occurred after the initiation of
452 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
453 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
454 (10), (12), (14), (19), (24), (25), (26), (27), [or] (28), or (29), or Subsection 58-55-504(2); and

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

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

460 (j) In addition to any other licensure sanction or fine imposed under this section, the
461 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)

462 two or more times within a 12-month period, unless, with respect to a violation of Subsection
 463 [58-55-501\(24\)](#), the licensee can demonstrate that the licensee successfully verified the federal
 464 legal working status of the individual who was the subject of the violation using a status
 465 verification system, as defined in Section [13-47-102](#).

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

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

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

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

476 (d) In an action brought to enforce the provisions of this section, the court shall award
 477 reasonable attorney fees and costs [~~shall be awarded~~] to the prevailing party.

478 Section 7. Section [58-55-605](#) is enacted to read:

479 **[58-55-605](#). Pay statement required.**

480 (1) On the day on which a person licensed under this chapter pays an individual for
 481 work that the individual performed, the person shall give the individual a written or electronic
 482 pay statement that states:

483 (a) the individual's name;

484 (b) the individual's $\hat{S} \rightarrow$ base $\leftarrow \hat{S}$ rate of pay;

485 (c) the dates of the pay period for which the individual is being paid;

486 (d) $\hat{H} \rightarrow$ if paid hourly, $\leftarrow \hat{H}$ the number of hours the individual worked during
 486a the pay period;

487 (e) the amount of and reason for any money withheld in accordance with state or
 488 federal law, including:

489 (i) state and federal income tax;

490 (ii) Social Security tax;

491 (iii) Medicare tax; and

492 (iv) court-ordered withholdings; and

- 493 (f) the total amount paid to the individual for that pay period.
494 (2) A person licensed under this chapter shall:
495 (a) comply with the requirements described in Subsection (1) regardless of whether the
496 licensee pays the individual by check, cash, or other means;
497 (b) retain a copy of each pay statement described in Subsection (1) for at least three
498 years after the day on which the person gives a copy of the pay statement to the individual; and
499 (c) upon request, make the pay statement records described in this section available to
500 the division for inspection.

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