

## SB0087S01 compared with SB0087

~~text~~ shows text that was in SB0087 but was deleted in SB0087S01.

text shows text that was not in SB0087 but was inserted into SB0087S01.

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Senator Karen Mayne proposes the following substitute bill:

### CONTRACTOR EMPLOYEE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: ~~\_\_\_\_\_~~ Don L. Ipson

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ clarifies that unlawful conduct includes hiring or ~~otherwise compensating~~ employing an unlicensed person to perform work on a project, unless the person:
  - is an employee of a licensee for wages; and
  - is not required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
- ▶ requires a licensee to provide a pay statement to an individual each time the licensee

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pays the individual in cash for work performed;

- ▶ provides enforcement and penalty mechanisms for the provisions of this bill; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**34-28-3**, as last amended by Laws of Utah 2008, Chapter 254

**34-28-9**, as last amended by Laws of Utah 1997, Chapter 375

**34-28-10**, as last amended by Laws of Utah 1997, Chapter 375

**34-28-19**, as last amended by Laws of Utah 2008, Chapter 382

**58-55-501**, as last amended by Laws of Utah 2013, Chapter 57

**58-55-503**, as last amended by Laws of Utah 2013, Chapter 57

ENACTS:

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

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

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

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

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

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

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

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

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

(i) in lawful money of the United States;

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

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

(2) An employer may not issue in payment of wages due or as an advance on wages to be earned for services performed or to be performed within this state an order, check, or draft unless:

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

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

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

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

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

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

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

(4) ~~If a deduction is made~~ If Regardless of whether an employer pays an employee by check, cash, or other means, if the employer makes a deduction [is made] from the wages paid to the employee, the employer shall, on each regular payday, furnish the employee with a statement [showing] that shows the total amount of each deduction.

(5) ~~An~~ If an employer licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, pays an employee in cash, the employer shall

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

~~(i)~~ a the employee's name;

~~(ii)~~ b the employee's base rate of pay;

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

~~(iv)~~ d the number of hours the employee worked during the pay period;

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

~~(A)~~ i state and federal income tax;

~~(B)~~ ii Social Security tax;

~~(C)~~ iii Medicare tax; and

~~(D)~~ iv court-ordered withholdings; and

~~(vi)~~ f the total amount paid to the employee for that pay period ~~;~~ and ~~;~~

~~(b) comply with the requirements described in Subsection (5)(a) regardless of whether the employer pays the employee by check, cash, or other means.~~

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

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

(i) court order; or

(ii) state or federal law;

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

(c) the employer presents evidence that in the opinion of a hearing officer or an administrative law judge would warrant an offset; or

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

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

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

and

(B) established by the employer; and

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

employee's compensation is reduced by a specified contribution:

(A) under the contract or plan; and

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

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

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

~~[(6)]~~ (7) An employer may not require an employee to rebate, refund, offset, or return a part of the wage, salary, or compensation to be paid to the employee except as provided in Subsection ~~[(5)]~~ (6).

~~[(7)]~~ (8) (a) An employer shall notify an employee in writing of the right to make an election under Subsection ~~[(5)]~~ (6)(d).

(b) An employee may make an election described in Subsection ~~[(5)]~~ (6)(d) at any time by providing the employer written notice of the election.

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

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

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

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

(1) (a) The division shall:

(i) ensure compliance with this chapter;

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

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

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

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

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

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

(2) (a) The division may assess against an employer who fails to pay an employee in

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accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee which shall be assessed daily until paid for a period not to exceed 20 days.

(b) The division shall:

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

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

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

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

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

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

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

(iii) \$100 for the third violation within a one-year period; and

(iv) \$500 for the fourth violation and each subsequent violation within a one-year period.

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

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

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

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

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

~~(4)~~ (5) (a) The commission may employ counsel, appoint a representative, or request the attorney general, or the county attorney for the county in which ~~the plaintiff or the~~

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~~defendant resides, depending on the district in which]~~ the final award is filed and docketed, to represent the commission on all appeals and to enforce judgments.

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

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

~~[(5)]~~ (6) (a) The commission may enter into reciprocal agreements with the labor department or a corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of that department or agency, for the collection in any other state of claims or judgments for wages and other demands based upon claims previously assigned to the commission.

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

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

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

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

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

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

(1) (a) Every employer shall keep a true and accurate record of time worked and wages

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paid each pay period to each employee who is employed on an hourly or a daily basis in the form required by the commission rules.

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

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

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

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

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

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

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

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

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

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

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

(i) the discharge of an employee;

(ii) the demotion of an employee; or

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

(2) (a) An employee claiming to be aggrieved by an action of the employer in violation



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of Subsection (1) may file with the division a request for agency action.

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

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

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

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

(a) cease and desist any retaliatory action;

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

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

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

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

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

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

Unlawful conduct includes:

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

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

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

(3) hiring or ~~otherwise compensating~~ employing a person who is not licensed under

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this chapter to perform work on a project, unless the person:

- (a) is an employee of a person licensed under this chapter for wages; and
- (b) is not required to be licensed under this chapter:
  - (4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;
  - (5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;
  - (6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;
  - (7) failing to obtain a building permit when required by law or rule;
  - (8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
  - (9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
  - (10) allowing one's license to be used by another except as provided by statute or rule;
  - (11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;
  - (12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under the speciality contractor's supervision;
  - (13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;
  - (14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions

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under Section 58-1-307;

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

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

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

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

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

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

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

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

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

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

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

(20) wrongfully filing a preconstruction or construction lien in violation of Section 38-1a-308;

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

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

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

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

(b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah while not lawfully present in the United States;

(25) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an individual who engages, or will engage, in a construction trade in Utah for a separate entity for which the unincorporated entity provides the individual as labor:

(a) workers' compensation coverage:

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

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

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

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

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

(i) the contractor uses; and

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

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

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

(b) an unincorporated entity providing labor to an entity licensed under this chapter by providing an individual, who owns an interest in the unincorporated entity, to engage in a

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construction trade in the state while the individual is using a Social Security number that does not belong to that individual; ~~or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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(iii) notifying the division concerning loss of insurance coverage<sup>[5]</sup> or change in qualifier.

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

(i) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), [or] (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), [or] (28), or (29), or Subsection 58-55-504(2).

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

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

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

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

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

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- (i) in accordance with the Utah Rules of Civil Procedure;
  - (ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or
  - (iii) by mail.
- (d) (i) If within 20 calendar days [~~from the service of~~] after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
- (ii) The period to contest a citation may be extended by the division for cause.
- (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
- (f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
- (g) A citation may not be issued under this section after the expiration of six months following the occurrence of a violation.
- (h) The director or the director's designee shall assess a fine in accordance with the following:
- (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
  - (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
- and
- (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.
- (i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:
- (A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), [~~or~~] (28), or (29), or Subsection 58-55-504(2); or
  - (B) (I) the division initiated an action for a first or second offense;
  - (II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

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

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

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

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

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

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

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

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

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

Section 7. Section **58-55-605** is enacted to read:

### **58-55-605. Pay statement required.**

(1) ~~On the day on which~~ If a person licensed under this chapter pays an individual in cash for work that the individual performed, on the day on which the person pays the



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individual, the person shall give the individual a written or electronic pay statement that states:

- (a) the individual's name;
- (b) the individual's base rate of pay;
- (c) the dates of the pay period for which the individual is being paid;
- (d) the number of hours the individual worked during the pay period;
- (e) the amount of and reason for any money withheld in accordance with state or

federal law, including:

- (i) state and federal income tax;
- (ii) Social Security tax;
- (iii) Medicare tax; and
- (iv) court-ordered withholdings; and
- (f) the total amount paid to the individual for that pay period.

(2) A person licensed under this chapter shall:

~~{ (a) comply with the requirements described in Subsection (1) regardless of whether the licensee pays the individual by check, cash, or other means;~~

† ~~(b) retain a copy of each pay statement described in Subsection (1) for at least three years after the day on which the person gives a copy of the pay statement to the individual; and~~

~~(c) upon request, make the pay statement records described in this section available to the division for inspection.~~

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### Legislative Review Note

~~as of 2-11-14 10:30 AM~~

~~Office of Legislative Research and General Counsel~~