

1 **CONSTRUCTION TRADES LICENSING AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Construction Trades Licensing Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ prohibits an unincorporated entity that is subject to the Utah Construction Trades
13 Licensing Act from assessing a management fee;
- 14 ▶ addresses the penalty for assessing a management fee in violation of the provisions
15 of this bill; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **58-55-102**, as last amended by Laws of Utah 2014, Chapter 81

24 **58-55-501**, as last amended by Laws of Utah 2014, Chapter 188

25 **58-55-503**, as last amended by Laws of Utah 2014, Chapter 188

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



28 Section 1. Section **58-55-102** is amended to read:

29 **58-55-102. Definitions.**

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

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

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

35 (i) a person engaged in the manufacture or sale of alarm systems unless:

36 (A) that person is also engaged in the installation, maintenance, alteration, repair,
37 replacement, servicing, or monitoring of alarm systems;

38 (B) the manufacture or sale occurs at a location other than a place of business
39 established by the person engaged in the manufacture or sale; or

40 (C) the manufacture or sale involves site visits at the place or intended place of
41 installation of an alarm system; or

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

45 (2) "Alarm company agent":

46 (a) except as provided in Subsection (2)(b), means any individual employed within this
47 state by an alarm business; and

48 (b) does not include an individual who:

49 (i) is not engaged in the sale, installation, maintenance, alteration, repair, replacement,
50 servicing, or monitoring of an alarm system; and

51 (ii) does not, during the normal course of the individual's employment with an alarm
52 business, use or have access to sensitive alarm system information.

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

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

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

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

59 master electrician, residential master electrician, a journeyman electrician, or a residential
60 journeyman electrician.

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

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

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

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

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

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

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

76 (9) "Commission" means the Construction Services Commission created under Section
77 58-55-103.

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

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

82 (ii) constructing, remodeling, or repairing a manufactured home or mobile home as
83 defined in Section 15A-1-302; or

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

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

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

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

95 (ii) any person who represents that the person is a contractor by advertising or any
96 other means;

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

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

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

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

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

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

108 (i) transporting or handling electrical materials;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

143 (21) (a) "General building contractor" means a person licensed under this chapter as a
144 general building contractor qualified by education, training, experience, and knowledge to
145 perform or superintend construction of structures for the support, shelter, and enclosure of
146 persons, animals, chattels, or movable property of any kind or any of the components of that
147 construction except plumbing, electrical work, mechanical work, work related to the operating
148 integrity of an elevator, and manufactured housing installation, for which the general building
149 contractor shall employ the services of a contractor licensed in the particular specialty, except
150 that a general building contractor engaged in the construction of single-family and multifamily
151 residences up to four units may perform the mechanical work and hire a licensed plumber or

152 electrician as an employee.

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

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

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

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

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

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

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

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

179 (27) "Management fee" means a fee that an unincorporated entity assesses against an
180 individual who owns an interest in the unincorporated entity for the purpose of paying for any
181 aspect of the unincorporated entity's operation.

182 [~~27~~] (28) "Master electrician" means a person licensed under this chapter as a master

183 electrician having the qualifications, training, experience, and knowledge to properly plan,
184 layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment
185 for light, heat, power, and other purposes.

186 ~~[(28)]~~ (29) "Master plumber" means a person licensed under this chapter as a master
187 plumber having the qualifications, training, experience, and knowledge to properly plan and
188 layout projects and supervise persons in the plumbing trade.

189 ~~[(29)]~~ (30) "Person" means a natural person, sole proprietorship, joint venture,
190 corporation, limited liability company, association, or organization of any type.

191 ~~[(30)]~~ (31) (a) "Plumbing trade" means the performance of any mechanical work
192 pertaining to the installation, alteration, change, repair, removal, maintenance, or use in
193 buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and
194 fittings for:

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

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

202 ~~[(31)]~~ (32) (a) "Ratio of apprentices" means, for the purpose of determining
203 compliance with the requirements for planned programs of training and electrician apprentice
204 licensing applications, the shop ratio of apprentice electricians to journeyman or master
205 electricians shall be one journeyman or master electrician to one apprentice on industrial and
206 commercial work, and one journeyman or master electrician to three apprentices on residential
207 work.

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

211 ~~[(32)]~~ (33) "Residential and small commercial contractor" means a person licensed
212 under this chapter as a residential and small commercial contractor qualified by education,
213 training, experience, and knowledge to perform or superintend the construction of

214 single-family residences, multifamily residences up to four units, and commercial construction
215 of not more than three stories above ground and not more than 20,000 square feet, or any of the
216 components of that construction except plumbing, electrical work, mechanical work, and
217 manufactured housing installation, for which the residential and small commercial contractor
218 shall employ the services of a contractor licensed in the particular specialty, except that a
219 residential and small commercial contractor engaged in the construction of single-family and
220 multifamily residences up to four units may perform the mechanical work and hire a licensed
221 plumber or electrician as an employee.

222 ~~[(33)]~~ (34) "Residential building," as it relates to the license classification of residential
223 journeyman plumber and residential master plumber, means a single or multiple family
224 dwelling of up to four units.

225 ~~[(34)]~~ (35) "Residential journeyman electrician" means a person licensed under this
226 chapter as a residential journeyman electrician having the qualifications, training, experience,
227 and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat,
228 power, and other purposes on buildings using primarily nonmetallic sheath cable.

229 ~~[(35)]~~ (36) "Residential journeyman plumber" means a person licensed under this
230 chapter as a residential journeyman plumber having the qualifications, training, experience, and
231 knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

232 ~~[(36)]~~ (37) "Residential master electrician" means a person licensed under this chapter
233 as a residential master electrician having the qualifications, training, experience, and
234 knowledge to properly plan, layout, and supervise the wiring, installation, and repair of
235 electrical apparatus and equipment for light, heat, power, and other purposes on residential
236 projects.

237 ~~[(37)]~~ (38) "Residential master plumber" means a person licensed under this chapter as
238 a residential master plumber having the qualifications, training, experience, and knowledge to
239 properly plan and layout projects and supervise persons in the plumbing trade as limited to the
240 plumbing of residential buildings.

241 ~~[(38)]~~ (39) "Residential project," as it relates to an electrician or electrical contractor,
242 means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard
243 rules and regulations governing this work, including the National Electrical Code, and in which
244 the voltage does not exceed 250 volts line to line and 125 volts to ground.

245 [~~(39)~~] (40) "Sensitive alarm system information" means:

246 (a) a pass code or other code used in the operation of an alarm system;

247 (b) information on the location of alarm system components at the premises of a
248 customer of the alarm business providing the alarm system;

249 (c) information that would allow the circumvention, bypass, deactivation, or other
250 compromise of an alarm system of a customer of the alarm business providing the alarm
251 system; and

252 (d) any other similar information that the division by rule determines to be information
253 that an individual employed by an alarm business should use or have access to only if the
254 individual is licensed as provided in this chapter.

255 [~~(40)~~] (41) (a) "Specialty contractor" means a person licensed under this chapter under
256 a specialty contractor classification established by rule, who is qualified by education, training,
257 experience, and knowledge to perform those construction trades and crafts requiring
258 specialized skill, the regulation of which are determined by the division to be in the best
259 interest of the public health, safety, and welfare.

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

263 [~~(41)~~] (42) "Unincorporated entity" means an entity that is not:

264 (a) an individual;

265 (b) a corporation; or

266 (c) publicly traded.

267 [~~(42)~~] (43) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

268 [~~(43)~~] (44) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502
269 and as may be further defined by rule.

270 [~~(44)~~] (45) "Wages" means amounts due to an employee for labor or services whether
271 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for
272 calculating the amount.

273 Section 2. Section 58-55-501 is amended to read:

274 **58-55-501. Unlawful conduct.**

275 Unlawful conduct includes:

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

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

283 (3) hiring or employing a person who is not licensed under this chapter to perform
284 work on a project, unless the person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 321 (a) the building or construction laws of this state or any political subdivision;
- 322 (b) the safety and labor laws applicable to a project;
- 323 (c) any provision of the health laws applicable to a project;
- 324 (d) the workers' compensation insurance laws of the state applicable to a project;
- 325 (e) the laws governing withholdings for employee state and federal income taxes,
326 unemployment taxes, Social Security payroll taxes, or other required withholdings; or
- 327 (f) reporting, notification, and filing laws of this state or the federal government;

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

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

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

336 (20) wrongfully filing a preconstruction or construction lien in violation of Section
337 38-1a-308;

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

340 (22) an alarm company allowing an employee with a temporary license under Section
341 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
342 license, as provided in Subsection 58-55-312(3)(a)(ii);

343 (23) an alarm company agent under a temporary license under Section 58-55-312
344 engaging in conduct outside the scope of the temporary license, as provided in Subsection
345 58-55-312(3)(a)(ii);

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

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

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

356 (a) workers' compensation coverage:

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

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

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

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

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

368 (i) the contractor uses; and

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

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

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

375 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
376 providing an individual, who owns an interest in the unincorporated entity, to engage in a
377 construction trade in the state while the individual is using a Social Security number that does
378 not belong to that individual;

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

381 (29) failing to timely comply with the requirements described in Section 58-55-605[-];
382 or

383 (30) an unincorporated entity assessing a management fee against an individual who
384 owns less than an 8% interest, as defined by rule made by the division in accordance with Title
385 63G, Chapter 3, Utah Administrative Rulemaking Act, in the unincorporated entity.

386 Section 3. Section 58-55-503 is amended to read:

387 **58-55-503. Penalty for unlawful conduct -- Citations.**

388 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
389 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), [or]
390 (29), or (30), or Subsection 58-55-504(2), or who fails to comply with a citation issued under
391 this section after it is final, is guilty of a class A misdemeanor.

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

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

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

400 Section 76-6-412.

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

403 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section
404 58-55-501, or Subsection 58-55-504(2); and

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

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

410 (ii) filing a current financial statement with the division; and

411 (iii) notifying the division concerning loss of insurance coverage or change in qualifier.

412 (4) (a) If upon inspection or investigation, the division concludes that a person has
413 violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
414 (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), ~~(29)~~, or (30), Subsection
415 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
416 action is appropriate, the director or the director's designee from within the division shall
417 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
418 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
419 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

420 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
421 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26),
422 (27), (28), ~~(29)~~, or (30), or Subsection 58-55-504(2), as evidenced by an uncontested
423 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
424 be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be
425 ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1),
426 (2), (3), (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), ~~(29)~~, or (30), or
427 Subsection 58-55-504(2).

428 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
429 58-55-401 may not be assessed through a citation.

430 (b) (i) A citation shall be in writing and describe with particularity the nature of the

431 violation, including a reference to the provision of the chapter, rule, or order alleged to have
432 been violated.

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

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

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

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

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

444 (iii) by mail.

445 (d) (i) If within 20 calendar days after the day on which a citation is served, the person
446 to whom the citation was issued fails to request a hearing to contest the citation, the citation
447 becomes the final order of the division and is not subject to further agency review.

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

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

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

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

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

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

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

459 and

460 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
461 \$2,000 for each day of continued offense.

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

464 (A) the division previously issued a final order determining that a person committed a
465 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
466 (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), [or] (29), or (30), or Subsection
467 58-55-504(2); or

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

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

471 (III) the division determines during an investigation that occurred after the initiation of
472 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
473 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
474 (10), (12), (14), (19), (24), (25), (26), (27), (28), [or] (29), or (30), or Subsection 58-55-504(2);
475 and

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

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

481 (j) In addition to any other licensure sanction or fine imposed under this section, the
482 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)
483 two or more times within a 12-month period, unless, with respect to a violation of Subsection
484 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal
485 legal working status of the individual who was the subject of the violation using a status
486 verification system, as defined in Section 13-47-102.

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

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

491 (b) A penalty that is not paid may be collected by the director by either referring the
492 matter to a collection agency or bringing an action in the district court of the county in which

493 the person against whom the penalty is imposed resides or in the county where the office of the
494 director is located.

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

497 (d) In an action brought to enforce the provisions of this section, the court shall award
498 reasonable attorney fees and costs to the prevailing party.

Legislative Review Note
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