

PROFESSIONAL LICENSING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals the Residence Lien Restriction and Lien Recovery Fund Act and related provisions and modifies provisions related to the Building Inspector and Factory Built Housing Licensing Act.

Highlighted Provisions:

This bill:

- ▶ repeals the Residence Lien Restriction and Lien Recovery Fund Act and related provisions;
- ▶ modifies provisions related to the Building Inspector and Factory Built Housing Licensing Act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

38-1a-301, as renumbered and amended by Laws of Utah 2012, Chapter 278

38-1a-402, as last amended by Laws of Utah 2013, Chapter 464

38-1a-502, as renumbered and amended by Laws of Utah 2012, Chapter 278



- 28 **38-1a-701**, as renumbered and amended by Laws of Utah 2012, Chapter 278
- 29 **38-1a-706**, as enacted by Laws of Utah 2012, Chapter 278
- 30 **38-1a-707**, as renumbered and amended by Laws of Utah 2012, Chapter 278
- 31 **38-11-103**, as last amended by Laws of Utah 1995, Chapter 172
- 32 **38-12-102**, as last amended by Laws of Utah 2014, Chapter 129
- 33 **58-55-103**, as last amended by Laws of Utah 2016, Chapter 25
- 34 **58-55-302**, as last amended by Laws of Utah 2017, Chapter 411
- 35 **58-55-303**, as last amended by Laws of Utah 2013, Chapter 57
- 36 **58-55-401**, as last amended by Laws of Utah 2011, Chapter 413
- 37 **58-55-501**, as last amended by Laws of Utah 2014, Chapter 188
- 38 **58-55-502**, as last amended by Laws of Utah 2011, Chapters 170 and 413
- 39 **58-55-503**, as last amended by Laws of Utah 2017, Chapter 339
- 40 **58-56-9**, as last amended by Laws of Utah 2011, Chapter 14
- 41 **58-56-9.3**, as last amended by Laws of Utah 2010, Chapter 310
- 42 **58-56-9.5**, as last amended by Laws of Utah 2010, Chapter 278
- 43 **63J-1-504**, as last amended by Laws of Utah 2013, Chapter 310

ENACTS:

- 45 **58-56-9.4**, Utah Code Annotated 1953
- 46 **63I-2-238**, Utah Code Annotated 1953

REPEALS:

- 48 **38-11-101**, as enacted by Laws of Utah 1994, Chapter 308
- 49 **38-11-102**, as last amended by Laws of Utah 2014, Chapter 108
- 50 **38-11-104**, as last amended by Laws of Utah 2004, Chapter 42
- 51 **38-11-105**, as last amended by Laws of Utah 2008, Chapter 382
- 52 **38-11-106**, as last amended by Laws of Utah 2004, Chapter 42
- 53 **38-11-107**, as last amended by Laws of Utah 2012, Chapter 278
- 54 **38-11-108**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **38-11-109**, as enacted by Laws of Utah 1999, Chapter 193
- 56 **38-11-110**, as last amended by Laws of Utah 2010, Chapter 31
- 57 **38-11-201**, as last amended by Laws of Utah 2013, Chapter 400
- 58 **38-11-202**, as last amended by Laws of Utah 2009, Chapter 183

- 59 **38-11-203**, as last amended by Laws of Utah 2016, Chapter 238
- 60 **38-11-204**, as last amended by Laws of Utah 2017, Chapter 373
- 61 **38-11-205**, as last amended by Laws of Utah 1999, Chapter 193
- 62 **38-11-206**, as last amended by Laws of Utah 2011, Chapter 367
- 63 **38-11-207**, as last amended by Laws of Utah 2008, Chapter 382
- 64 **38-11-301**, as last amended by Laws of Utah 2009, Chapter 183
- 65 **38-11-302**, as last amended by Laws of Utah 2009, Chapter 183

66 _____
67 *Be it enacted by the Legislature of the state of Utah:*

68 Section 1. Section **38-1a-301** is amended to read:

69 **38-1a-301. Those entitled to lien -- What may be attached.**

70 (1) [~~Except as provided in Section **38-11-107**, a~~] A person who provides
71 preconstruction service or construction work on or for a project property has a lien on the
72 project property for the reasonable value of the preconstruction service or construction work,
73 respectively, as provided in this chapter.

74 (2) A person may claim a preconstruction lien and a separate construction lien on the
75 same project property.

76 (3) (a) A construction lien may include an amount claimed for a preconstruction
77 service.

78 (b) A preconstruction lien may not include an amount claimed for construction work.

79 (4) A preconstruction or construction lien attaches only to the interest that the owner
80 has in the project property that is the subject of the lien.

81 Section 2. Section **38-1a-402** is amended to read:

82 **38-1a-402. Notice of preconstruction lien -- Requirements.**

83 (1) Within 90 days after completing a preconstruction service for which a claimant is
84 not paid in full, a claimant who desires to claim a preconstruction lien shall submit for
85 recording with each applicable county recorder a notice of preconstruction lien.

86 (2) A claimant who fails to submit a notice of preconstruction lien as provided in
87 Subsection (1) may not claim a preconstruction lien.

88 (3) (a) A notice of preconstruction service lien shall include:

89 (i) the claimant's name, mailing address, and telephone number;

- 90 (ii) a statement that the claimant claims a preconstruction lien;
- 91 (iii) the date the claimant's notice of preconstruction service was filed;
- 92 (iv) the name of the person that employed the claimant;
- 93 (v) a general description of the preconstruction service provided by the claimant;
- 94 (vi) the date that the claimant last provided preconstruction service;
- 95 (vii) the name, if known, of the reputed owner or, if not known, the name of the record
- 96 owner;

- 97 (viii) a description of the project property sufficient for identification;
- 98 (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the
- 99 claimant;

- 100 (x) the claimant's signature or the signature of the claimant's authorized agent; and
- 101 (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
- 102 of Documents[; ~~and~~].

103 [~~(xii) if the lien is against an owner-occupied residence, as defined in Section~~
104 ~~38-11-102, a statement meeting the requirements that the division has established by rule,~~
105 ~~describing the steps the owner of the owner-occupied residence may take to require a claimant~~
106 ~~to remove the lien as provided in Section 38-11-107;]~~

107 (b) (i) A claimant who is an original contractor or a supervising subcontractor may
108 include in a notice of preconstruction lien the name, address, and telephone number of each
109 subcontractor who is under contract with the claimant to provide preconstruction service that
110 the claimant is under contract to provide.

111 (ii) The inclusion of a subcontractor in a notice of preconstruction lien filed by another
112 claimant is not a substitute for the subcontractor's own submission of a notice of
113 preconstruction lien.

114 (4) (a) A county recorder:
115 (i) shall record each notice of preconstruction lien in an index maintained for that
116 purpose; and

117 (ii) need not verify that a valid notice of preconstruction service is filed with respect to
118 the claimed preconstruction lien.

119 (b) All persons are considered to have notice of a notice of preconstruction lien from
120 the time it is recorded.

121 (5) (a) Within 30 days after a claimant's notice of preconstruction lien is recorded, the
122 claimant shall send by certified mail a copy of the notice to the reputed or record owner.

123 (b) If the record owner's address is not readily available to the claimant, the claimant
124 may mail a copy of the notice to the owner's last-known address as it appears on the last
125 completed assessment roll of the county in which the property is located.

126 (c) A claimant's failure to mail a copy of the notice as required in this Subsection (5)
127 precludes the claimant from being awarded costs and attorney fees against the reputed or record
128 owner in an action to enforce the lien.

129 (6) Nothing in this section may be construed to prohibit a claimant from recording a
130 notice of preconstruction lien before completing the preconstruction service the claimant
131 contracted to provide.

132 Section 3. Section **38-1a-502** is amended to read:

133 **38-1a-502. Notice of construction lien -- Contents -- Recording -- Service on**
134 **owner.**

135 (1) (a) A person who desires to claim a construction lien shall submit for recording in
136 the office of each applicable county recorder a notice of construction lien no later than, except
137 as provided in Subsection (1)(b):

138 (i) 180 days after the date on which final completion of the original contract occurs, if
139 no notice of completion is filed under Section [38-1a-507](#); or

140 (ii) 90 days after the date on which a notice of completion is filed under Section
141 [38-1a-507](#), but not later than 180 days after the date on which final completion of the original
142 contract occurs.

143 (b) A subcontractor who provides substantial work after a certificate of occupancy is
144 issued or a required final inspection is completed and desires to claim a construction lien shall
145 submit for recording in the office of each applicable county recorder a notice of construction
146 lien no later than 180 days after final completion of that subcontractor's work.

147 (2) A notice of construction lien shall contain:

148 (a) the name of the reputed owner if known or, if not known, the name of the record
149 owner;

150 (b) the name of the person by whom the claimant was employed or to whom the
151 claimant provided construction work;

- 152 (c) the time when the claimant first and last provided construction work;
- 153 (d) a description of the project property, sufficient for identification;
- 154 (e) the name, current address, and current phone number of the claimant;
- 155 (f) the amount claimed under the construction lien;
- 156 (g) the signature of the claimant or the claimant's authorized agent; and
- 157 (h) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
- 158 of Documents[; ~~and~~].

159 ~~[(i) if the construction lien is on an owner-occupied residence, as defined in Section~~
 160 ~~38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may~~
 161 ~~take to require a lien claimant to remove the lien in accordance with Section 38-11-107.]~~

162 (3) (a) A county recorder:

163 (i) shall record each notice of construction lien in an index maintained for that purpose;

164 and

165 (ii) need not verify that a valid preliminary notice is filed with respect to the claimed
 166 construction lien.

167 (b) All persons are considered to have notice of a notice of construction lien from the
 168 time it is recorded.

169 (4) (a) Within 30 days after filing a notice of construction lien, the claimant shall
 170 deliver or mail by certified mail a copy of the notice to the reputed owner or the record owner.

171 (b) If the record owner's current address is not readily available to the claimant, the
 172 claimant may mail a copy of the notice to the last known address of the record owner, using the
 173 names and addresses appearing on the last completed real property assessment rolls of the
 174 county where the project property is located.

175 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
 176 precludes the claimant from an award of costs and attorney fees against the reputed owner or
 177 record owner in an action to enforce the construction lien.

178 (5) The division shall make rules governing the form of the statement required under
 179 Subsection (2)(i).

180 Section 4. Section **38-1a-701** is amended to read:

181 **38-1a-701. Action to enforce lien -- Time for filing action -- Notice of pendency of**
 182 **action -- Action involving a residence.**

183 (1) As used in this section:

184 [~~(a) "Owner" has the same meaning as defined in Section 38-11-102.~~]

185 [~~(b) "Residence" has the same meaning as defined in Section 38-11-102.~~]

186 (a) "Owner" means a person who:

187 (i) contracts with a person who is licensed as a contractor or is exempt from licensure
188 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
189 owner-occupied residence upon real property that the person:

190 (A) owns; or

191 (B) purchases after the person enters into a contract and before completion of the
192 owner-occupied residence;

193 (ii) contracts with a real estate developer to buy a residence upon completion of the
194 construction on the owner-occupied residence; or

195 (iii) purchases a residence from a real estate developer after completion of the
196 construction on the owner-occupied residence.

197 (b) "Owner-occupied residence" means a residence that is, or after completion of the
198 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
199 primary or secondary residence within 180 days after the day on which the construction on the
200 residence is complete.

201 (2) In order to enforce a preconstruction lien or construction lien, a claimant shall file
202 an action to enforce the lien:

203 (a) except as provided in Subsection (2)(b), within 180 days after the day on which the
204 claimant files:

205 (i) a notice of preconstruction lien under Section 38-1a-402, for a preconstruction lien;
206 or

207 (ii) a notice of construction lien under Section 38-1a-502, for a construction lien; or

208 (b) if an owner files for protection under the bankruptcy laws of the United States
209 before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the
210 automatic stay under the bankruptcy proceeding is lifted or expires.

211 (3) (a) (i) Within the time period provided in Subsection (2) for filing an action, a
212 claimant shall file for record with each applicable county recorder a notice of the pendency of
213 the action, in the manner provided for actions affecting the title or right to possession of real

214 property.

215 (ii) If a claimant fails to file for record a notice of the pendency of the action, as
216 required in Subsection (3)(a)(i), the preconstruction lien or construction lien, as applicable, is
217 void, except as to persons who have been made parties to the action and persons having actual
218 knowledge of the commencement of the action.

219 (b) The burden of proof is upon the claimant and those claiming under the claimant to
220 show actual knowledge under Subsection (3)(a)(ii).

221 (4) (a) A preconstruction lien or construction lien is automatically and immediately
222 void if an action to enforce the lien is not filed within the time required by this section.

223 (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to
224 adjudicate a preconstruction or construction lien that becomes void under Subsection (4)(a).

225 (5) This section may not be interpreted to impair or affect the right of any person to
226 whom a debt may be due for any preconstruction service or construction work to maintain a
227 personal action to recover the debt.

228 ~~[(6) (a) If a claimant files an action to enforce a preconstruction or construction lien
229 involving a residence, the claimant shall include with the service of the complaint on the owner
230 of the residence:]~~

231 ~~[(i) instructions to the owner of the residence relating to the owner's rights under Title
232 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and]~~

233 ~~[(ii) a form to enable the owner of the residence to specify the grounds upon which the
234 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and
235 Lien Recovery Fund Act.]~~

236 ~~[(b) The instructions and form required by Subsection (6)(a) shall meet the
237 requirements established by the division by rule.]~~

238 ~~[(c) If a claimant fails to provide to the owner of the residence the instructions and
239 form required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the
240 preconstruction or construction lien upon the residence.]~~

241 ~~[(d) A court shall stay an action to determine the rights and liabilities of an owner of a
242 residence under this chapter, Title 38, Chapter 11, Residence Lien Restriction and Lien
243 Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, until after the owner is given a
244 reasonable period of time to:]~~

245 ~~[(i) establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an~~
 246 ~~informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act,~~
 247 ~~commenced at the division within 30 days after the owner is served with summons in the~~
 248 ~~foreclosure action; and]~~

249 ~~[(ii) obtain a certificate of compliance or denial of certificate of compliance, as defined~~
 250 ~~in Section 38-11-102.;~~

251 ~~[(e) An owner applying for a certificate of compliance under Subsection (6)(d) shall~~
 252 ~~send by certified mail to all claimants:]~~

253 ~~[(i) a copy of the application for a certificate of compliance; and]~~

254 ~~[(ii) all materials filed in connection with the application.;~~

255 ~~[(f) The division shall notify all claimants listed in an owner's application for a~~
 256 ~~certificate of compliance under Subsection (6)(d) of the issuance or denial of a certificate of~~
 257 ~~compliance.;~~

258 Section 5. Section **38-1a-706** is amended to read:

259 **38-1a-706. Apportionment of costs -- Costs and attorney fees to subcontractor.**

260 (1) ~~[Except as provided in Section 38-11-107, the]~~ The court shall apportion costs
 261 between the owner and original contractor according to the right of the case.

262 (2) The court shall award a subcontractor with a valid preconstruction or construction
 263 lien:

264 (a) all of the subcontractor's costs, including the costs of preparing and recording the
 265 notice of preconstruction or construction lien; and

266 (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the
 267 notice of preconstruction or construction lien.

268 Section 6. Section **38-1a-707** is amended to read:

269 **38-1a-707. Attorney fees -- Offer of judgment.**

270 (1) Except as provided in ~~[Section 38-11-107 and in]~~ Subsection (2), in any action
 271 brought to enforce any lien under this chapter the successful party shall be entitled to recover
 272 reasonable attorney fees, to be fixed by the court, which shall be taxed as costs in the action.

273 (2) A person who files a wrongful lien as provided in Section **38-1a-308** may not
 274 recover attorney fees under Subsection (1).

275 (3) (a) A person against whom an action is brought to enforce a preconstruction or

276 construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of
277 Civil Procedure.

278 (b) If the offer is not accepted and the judgment finally obtained by the offeree is not
279 more favorable than the offer, the offeree shall pay the costs and attorney fees incurred by the
280 offeror after the offer was made.

281 Section 7. Section **38-11-103** is amended to read:

282 **38-11-103. Administration.**

283 (1) This chapter shall be administered by the Division of Occupational and
284 Professional Licensing pursuant to the provisions of this chapter and consistent with Title 58,
285 Chapter 1, Division of Occupational and Professional Licensing Act.

286 (2) The division shall prepare for the substantive provisions of this chapter to be
287 repealed on July 1, 2018.

288 (3) Any money remaining in the Residence Lien Recovery Fund on July 1, 2018, shall
289 be transferred to the General Fund.

290 Section 8. Section **38-12-102** is amended to read:

291 **38-12-102. Notice requirements for lien filings -- Exceptions.**

292 (1) A lien claimant or the lien claimant's agent shall send by certified mail a written
293 copy of a notice of lien to the last-known address of the person against whom the notice of lien
294 is filed no later than 30 days after the day on which the notice of lien is submitted for recording
295 with:

296 (a) a county recorder;

297 (b) a county clerk;

298 (c) a clerk of the court; or

299 (d) in the case of a lien on an aircraft under Section **38-13-201**, the Federal Aviation
300 Administration.

301 (2) (a) A notice of lien submitted for recording shall contain the following information:

302 (i) the name and address of the person against whom the lien is filed;

303 (ii) a statement that the property owned by the person against whom the lien is filed is
304 subject to a lien;

305 (iii) (A) the amount of the judgment, settlement, or compromise, if the lien is based on
306 a charge against or interest in a judgment, settlement, or compromise;

- 307 (B) the amount of state taxes owed, if the lien is based on unpaid state taxes;
- 308 (C) the total amount of the unpaid assessment that is subject to the lien, including any
- 309 fees, charges, or costs, if the lien is based on an unpaid assessment under Title 57, Chapter 8,
- 310 Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act; or
- 311 (D) the amount of the unpaid fine, if the lien is based on an unpaid fine under Title 57,
- 312 Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association
- 313 Act; and
- 314 (iv) (A) the name, address, and phone number of the lien claimant; or
- 315 (B) if the lien claimant has a representative for purposes of the lien, the name of the
- 316 lien claimant and the name, address, and phone number of the lien claimant's representative.
- 317 (b) When a lien claimant mails a copy of a notice of lien to the person against whom
- 318 the notice of lien is filed, in accordance with Subsection (1), the notice of lien shall contain:
- 319 (i) the requirements described in Subsection (2)(a);
- 320 (ii) the date the notice of lien was submitted for recording; and
- 321 (iii) the article number on the certified mail receipt.
- 322 (3) The notice requirements of Subsections (1) and (2) do not apply to:
- 323 (a) a preconstruction or construction lien as provided in Title 38, Chapter 1a,
- 324 Preconstruction and Construction Liens;
- 325 (b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;
- 326 (c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;
- 327 (d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;
- 328 (e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service
- 329 Storage Facilities;
- 330 (f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining
- 331 Liens;
- 332 [~~(g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter~~
- 333 ~~11, Residence Lien Restriction and Lien Recovery Fund Act;~~]
- 334 [~~(h)~~] (g) a trust deed;
- 335 [~~(i)~~] (h) a mortgage;
- 336 [~~(j)~~] (i) any interests subject to a security agreement as defined in Section 70A-9a-102;
- 337 [~~(k)~~] (j) any other liens subject to the same or stricter notice requirements than those

338 imposed by Subsections (1) and (2); or

339 ~~[(f)]~~ (k) a court judgment or abstract of a court judgment presented for recording in the
340 office of a county recorder.

341 Section 9. Section **58-55-103** is amended to read:

342 **58-55-103. Construction Services Commission created -- Functions --**

343 **Appointment -- Qualifications and terms of members -- Vacancies -- Expenses -- Meetings**
344 **-- Concurrence.**

345 (1) (a) There is created within the division the Construction Services Commission.

346 (b) The commission shall:

347 (i) with the concurrence of the director, make reasonable rules under Title 63G,
348 Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter which
349 are consistent with this chapter including:

350 (A) licensing of various licensees;

351 (B) examination requirements and administration of the examinations, to include
352 approving and establishing a passing score for applicant examinations;

353 (C) standards of supervision for students or persons in training to become qualified to
354 obtain a license in the trade they represent; and

355 (D) standards of conduct for various licensees;

356 (ii) approve or disapprove fees adopted by the division under Section [63J-1-504](#);

357 (iii) except where the boards conduct them, conduct all administrative hearings not
358 delegated to an administrative law judge relating to the licensing of any applicant;

359 (iv) except as otherwise provided in [~~Sections [38-11-207](#) and~~ [Section 58-55-503](#)], with
360 the concurrence of the director, impose sanctions against licensees and certificate holders with
361 the same authority as the division under Section [58-1-401](#);

362 (v) advise the director on the administration and enforcement of any matters affecting
363 the division and the construction industry;

364 (vi) advise the director on matters affecting the division budget;

365 (vii) advise and assist trade associations in conducting construction trade seminars and
366 industry education and promotion; and

367 (viii) perform other duties as provided by this chapter.

368 (2) (a) Initially the commission shall be comprised of the five members of the

369 Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing
370 Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.

371 (b) The terms of office of the commission members who are serving on the Contractors
372 Licensing Board shall continue as they serve on the commission.

373 (c) Beginning July 1, 2004, the commission shall be comprised of nine members
374 appointed by the executive director with the approval of the governor from the following
375 groups:

376 (i) one member shall be a licensed general engineering contractor;

377 (ii) one member shall be a licensed general building contractor;

378 (iii) two members shall be licensed residential and small commercial contractors;

379 (iv) three members shall be the three chair persons from the Plumbers Licensing Board,
380 the Alarm System Security and Licensing Board, and the Electricians Licensing Board; and

381 (v) two members shall be from the general public, provided, however that the certified
382 public accountant on the Contractors Licensing Board will continue to serve until the current
383 term expires, after which both members under this Subsection (2)(c)(v) shall be appointed from
384 the general public.

385 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
386 members expire, the executive director with the approval of the governor shall appoint each
387 new member or reappointed member to a four-year term ending June 30.

388 (b) Notwithstanding the requirements of Subsection (3)(a), the executive director with
389 the approval of the governor shall, at the time of appointment or reappointment, adjust the
390 length of terms to stagger the terms of commission members so that approximately 1/2 of the
391 commission members are appointed every two years.

392 (c) A commission member may not serve more than two consecutive terms.

393 (4) The commission shall elect annually one of its members as chair, for a term of one
394 year.

395 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
396 appointed for the unexpired term.

397 (6) A member may not receive compensation or benefits for the member's service, but
398 may receive per diem and travel expenses in accordance with:

399 (a) Section [63A-3-106](#);

- 400 (b) Section [63A-3-107](#); and
- 401 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
- 402 [63A-3-107](#).
- 403 (7) (a) The commission shall meet at least monthly unless the director determines
- 404 otherwise.
- 405 (b) The director may call additional meetings at the director's discretion, upon the
- 406 request of the chair, or upon the written request of four or more commission members.
- 407 (8) (a) Five members constitute a quorum for the transaction of business.
- 408 (b) If a quorum is present when a vote is taken, the affirmative vote of commission
- 409 members present is the act of the commission.
- 410 (9) The commission shall comply with the procedures and requirements of Title 13,
- 411 Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures
- 412 Act, in all of its adjudicative proceedings.
- 413 (10) (a) For purposes of this Subsection (10), "concurrence" means the entities given a
- 414 concurring role must jointly agree for the action to be taken.
- 415 (b) If a provision of this chapter requires concurrence between the director or division
- 416 and the commission and no concurrence can be reached, the director or division has final
- 417 authority.
- 418 (c) When this chapter requires concurrence between the director or division and the
- 419 commission:
- 420 (i) the director or division shall report to and update the commission on a regular basis
- 421 related to matters requiring concurrence; and
- 422 (ii) the commission shall review the report submitted by the director or division under
- 423 this Subsection (10)(c) and concur with the report, or:
- 424 (A) provide a reason for not concurring with the report; and
- 425 (B) provide recommendations to the director or division.
- 426 Section 10. Section **58-55-302** is amended to read:
- 427 **58-55-302. Qualifications for licensure.**
- 428 (1) Each applicant for a license under this chapter shall:
- 429 (a) submit an application prescribed by the division;
- 430 (b) pay a fee as determined by the department under Section [63J-1-504](#);

431 (c) (i) meet the examination requirements established by rule by the commission with
432 the concurrence of the director, except that no examination, other than an examination as part
433 of a 25-hour course described in Subsection (1)(e)(iii), is required for licensure as an apprentice
434 electrician, apprentice plumber, or specialty contractor; or

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

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

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

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

441 (ii) produce satisfactory evidence of:

442 (A) except as provided in Subsection (2)(a), and except that no employment experience
443 is required for licensure as a specialty contractor, two years full-time paid employment
444 experience in the construction industry, which employment experience may be related to any
445 contracting classification unless more specifically described in this section; and

446 (B) knowledge of the principles of the conduct of business as a contractor, reasonably
447 necessary for the protection of the public health, safety, and welfare;

448 (iii) except as otherwise provided by rule by the commission with the concurrence of
449 the director, complete a 25-hour course established by rule by the commission with the
450 concurrence of the director, which is taught by an approved prec licensure course provider, and
451 which course may include:

452 (A) construction business practices;

453 (B) bookkeeping fundamentals;

454 (C) mechanics lien fundamentals;

455 (D) other aspects of business and construction principles considered important by the
456 commission with the concurrence of the director; and

457 (E) for no additional fee, an examination at the end of the 25-hour course;

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

461 (B) be a licensed master plumber if an applicant for a plumbing contractor's license or

462 a licensed master residential plumber if an applicant for a residential plumbing contractor's
463 license; or

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

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

469 (A) the individual's name, address, birth date, and social security number; and

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

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

473 (2) (a) If the applicant for a contractor's license described in Subsection (1) is a
474 building inspector, the applicant may satisfy Subsection (1)(e)(ii)(A) by producing satisfactory
475 evidence of two years full-time paid employment experience as a building inspector, which
476 shall include at least one year full-time experience as a licensed combination inspector.

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

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

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

484 and

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

486 (A) Department of Commerce;

487 (B) Division of Corporations and Commercial Code;

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

490 (D) State Tax Commission; and

491 (E) Internal Revenue Service.

492 (3) In addition to the general requirements for each applicant in Subsection (1),

493 applicants shall comply with the following requirements to be licensed in the following
494 classifications:

495 (a) (i) A master plumber shall produce satisfactory evidence that the applicant:
496 (A) has been a licensed journeyman plumber for at least two years and had two years of
497 supervisory experience as a licensed journeyman plumber in accordance with division rule;
498 (B) has received at least an associate of applied science degree or similar degree
499 following the completion of a course of study approved by the division and had one year of
500 supervisory experience as a licensed journeyman plumber in accordance with division rule; or
501 (C) meets the qualifications determined by the division in collaboration with the board
502 to be equivalent to Subsection (3)(a)(i)(A) or (B).

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

509 (iii) An individual holding a valid plumbing contractor's license or residential
510 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
511 2008:

512 (A) considered to hold a current master plumber license under this chapter if licensed
513 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this
514 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
515 58-55-303; and

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

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

522 (i) has been a licensed residential journeyman plumber for at least two years and had
523 two years of supervisory experience as a licensed residential journeyman plumber in

524 accordance with division rule; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

586 journeyman, residential master, or residential journeyman electrician; or

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

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

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

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

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

600 (k) An alarm company applicant shall:

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

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

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

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

608 (ii) if a corporation, provide:

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

613 (B) the names, addresses, dates of birth, social security numbers, and fingerprint cards
614 of all shareholders owning 5% or more of the outstanding shares of the corporation, except this
615 shall not be required if the stock is publicly listed and traded;

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

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

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

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

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

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

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

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

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

- 648 (x) file and maintain with the division evidence of:
- 649 (A) comprehensive general liability insurance in form and in amounts to be established
- 650 by rule by the commission with the concurrence of the director;
- 651 (B) workers' compensation insurance that covers employees of the applicant in
- 652 accordance with applicable Utah law; and
- 653 (C) registration as is required by applicable law with the:
- 654 (I) Division of Corporations and Commercial Code;
- 655 (II) Unemployment Insurance Division in the Department of Workforce Services, for
- 656 purposes of Title 35A, Chapter 4, Employment Security Act;
- 657 (III) State Tax Commission; and
- 658 (IV) Internal Revenue Service; and
- 659 (xi) meet with the division and board.
- 660 (l) Each applicant for licensure as an alarm company agent shall:
- 661 (i) submit an application in a form prescribed by the division accompanied by
- 662 fingerprint cards;
- 663 (ii) pay a fee determined by the department under Section [63J-1-504](#);
- 664 (iii) be of good moral character in that the applicant has not been convicted of a felony,
- 665 a misdemeanor involving moral turpitude, or any other crime that when considered with the
- 666 duties and responsibilities of an alarm company agent is considered by the board to indicate
- 667 that the best interests of the public are served by granting the applicant a license;
- 668 (iv) not have been declared by any court of competent jurisdiction incompetent by
- 669 reason of mental defect or disease and not been restored;
- 670 (v) not be currently suffering from habitual drunkenness or from drug addiction or
- 671 dependence; and
- 672 (vi) meet with the division and board if requested by the division or the board.
- 673 (m) (i) Each applicant for licensure as an elevator mechanic shall:
- 674 (A) provide documentation of experience and education credits of not less than three
- 675 years work experience in the elevator industry, in construction, maintenance, or service and
- 676 repair; and
- 677 (B) satisfactorily complete a written examination administered by the division
- 678 established by rule under Section [58-1-203](#); or

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

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

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

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

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

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

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

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

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

706 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
707 requiring a check of records of the Federal Bureau of Investigation for criminal history
708 information under this section.

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

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

714 (b) the results of the Federal Bureau of Investigation review concerning an applicant in
715 a timely manner after receipt of information from the Federal Bureau of Investigation.

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

719 (b) The division shall pay the Department of Public Safety the costs of all records
720 reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the
721 costs of records reviews under this section.

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

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

727 (i) the applicant has had a previous license, which was issued under this chapter,
728 suspended or revoked within two years before the date of the applicant's application;

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

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

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

737 (B) any owner or agent acting as a qualifier has served in any capacity listed in
738 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
739 this chapter, suspended or revoked within two years before the date of the applicant's
740 application; or

741 (iv) (A) the applicant includes an individual who was an owner, director, or officer of
742 an unincorporated entity at the time the entity's license under this chapter was revoked; and

743 (B) the application for licensure is filed within 60 months after the revocation of the
744 unincorporated entity's license.

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

747 (i) the applicant has had a previous license, which was issued under this chapter,
748 suspended or revoked more than two years before the date of the applicant's application;

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

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

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

757 (B) any owner or agent acting as a qualifier has served in any capacity listed in
758 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
759 this chapter, suspended or revoked more than two years before the date of the applicant's
760 application.

761 (10) (a) (i) A licensee that is an unincorporated entity shall file an ownership status
762 report with the division every 30 days after the day on which the license is issued if the licensee
763 has more than five owners who are individuals who:

764 (A) own an interest in the contractor that is an unincorporated entity;

765 (B) own, directly or indirectly, less than an 8% interest, as defined by rule made by the
766 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in the
767 unincorporated entity; and

768 (C) engage, or will engage, in a construction trade in the state as owners of the
769 contractor described in Subsection (10)(a)(i)(A).

770 (ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the
771 licensee shall provide the ownership status report with an application for renewal of licensure.

772 (b) An ownership status report required under this Subsection (10) shall:
773 (i) specify each addition or deletion of an owner:
774 (A) for the first ownership status report, after the day on which the unincorporated
775 entity is licensed under this chapter; and
776 (B) for a subsequent ownership status report, after the day on which the previous
777 ownership status report is filed;
778 (ii) be in a format prescribed by the division that includes for each owner, regardless of
779 the owner's percentage ownership in the unincorporated entity, the information described in
780 Subsection(1)(e)(v);
781 (iii) list the name of:
782 (A) each officer or manager of the unincorporated entity; and
783 (B) each other individual involved in the operation, supervision, or management of the
784 unincorporated entity; and
785 (iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504
786 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).
787 (c) The division may, at any time, audit an ownership status report under this
788 Subsection (10):
789 (i) to determine if financial responsibility has been demonstrated or maintained as
790 required under Section 58-55-306; and
791 (ii) to determine compliance with Subsection 58-55-501[(24), (25), or (27)](22), (23),
792 or (25) or Subsection 58-55-502(8) or (9).
793 (11) (a) An unincorporated entity that provides labor to an entity licensed under this
794 chapter by providing an individual who owns an interest in the unincorporated entity to engage
795 in a construction trade in Utah shall file with the division:
796 (i) before the individual who owns an interest in the unincorporated entity engages in a
797 construction trade in Utah, a current list of the one or more individuals who hold an ownership
798 interest in the unincorporated entity that includes for each individual:
799 (A) the individual's name, address, birth date, and social security number; and
800 (B) whether the individual will engage in a construction trade; and
801 (ii) every 30 days after the day on which the unincorporated entity provides the list
802 described in Subsection (11)(a)(i), an ownership status report containing the information that

803 would be required under Subsection (10) if the unincorporated entity were a licensed
804 contractor.

805 (b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership
806 status report described in Subsection (11)(a)(ii), an unincorporated entity shall pay a fee set by
807 the division in accordance with Section 63J-1-504.

808 (12) This chapter may not be interpreted to create or support an express or implied
809 independent contractor relationship between an unincorporated entity described in Subsection
810 (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax
811 withholding.

812 (13) A social security number provided under Subsection (1)(e)(v) is a private record
813 under Subsection 63G-2-302(1)(i).

814 Section 11. Section 58-55-303 is amended to read:

815 **58-55-303. Term of license -- Expiration -- Renewal.**

816 (1) (a) Each license issued under this chapter shall be issued in accordance with a
817 two-year renewal cycle established by rule.

818 (b) The division may by rule extend or shorten a renewal period by as much as one year
819 to stagger the renewal cycle it administers.

820 (c) (i) Notwithstanding a renewal cycle under Subsection (1)(a) or (b), notwithstanding
821 Title 63G, Chapter 4, Administrative Procedures Act, and subject to Subsection (1)(c)(ii), a
822 license is automatically suspended 60 days after the licensee:

823 (A) becomes, after the time of licensing, an unincorporated entity that is subject to the
824 ownership status report filing requirements of Subsection 58-55-302(10)(a)(i); or

825 (B) transfers its license to an unincorporated entity that is subject to the ownership
826 status report filing requirements of Subsection 58-55-302(10)(a)(i).

827 (ii) An automatic suspension does not occur under Subsection (1)(c)(i) if, before the
828 expiration of the 60-day period in Subsection (1)(c)(i):

829 (A) the licensee submits an application for renewal of the license; and

830 (B) the division renews the licensee's license pursuant to the licensee's application for
831 renewal.

832 (iii) Within 30 days after the effective date of a suspension under Subsection (1)(c)(i),
833 the commission shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act,

834 make a final determination concerning the suspension.

835 (2) At the time of renewal, the licensee shall show satisfactory evidence of:

836 (a) continuing financial responsibility as required under Section 58-55-306;

837 (b) for a contractor licensee, completion of six hours of approved continuing education,
838 as required in Section 58-55-302.5; and

839 (c) if the licensee is an apprentice electrician or plumber, journeyman electrician or
840 plumber, master electrician or plumber, residential journeyman electrician or plumber, or
841 residential master electrician or plumber, completion of the number of hours of continuing
842 education specified under Section 58-55-302.7.

843 (3) Each license automatically expires on the expiration date shown on the license
844 unless the licensee renews the license in accordance with Section 58-1-308.

845 (4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking
846 to renew or reinstate a license.

847 (5) In addition to any other requirements imposed by law, if a license has been
848 suspended or revoked for any reason, the applicant shall:

849 (a) ~~shall~~ pay in full all fines imposed by the division;

850 (b) resolve any outstanding citations or disciplinary actions with the division;

851 (c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution; and

852 (d) complete a new financial responsibility review as required under Section
853 58-55-306, using only titled assets~~;~~ and.

854 ~~[(e) pay in full any reimbursement amount as provided in Title 38, Chapter 11,
855 Residence Lien Restriction and Lien Recovery Fund Act.]~~

856 Section 12. Section 58-55-401 is amended to read:

857 **58-55-401. Grounds for denial of license and disciplinary proceedings.**

858 (1) In accordance with Section 58-1-401, the division may:

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

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

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

863 ~~[(d)]~~ (c) revoke, suspend, restrict, or place on probation the license of a licensee;

864 ~~[(e)]~~ (d) issue a public or private reprimand to a licensee; and

865 [~~(f)~~] (e) issue a cease and desist order.

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

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

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

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

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

873 Section 13. Section 58-55-501 is amended to read:

874 **58-55-501. Unlawful conduct.**

875 Unlawful conduct includes:

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

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

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

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

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

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

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

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

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

895 (8) submitting a bid for any work for which a license is required under this chapter by a

896 person not licensed or exempted from licensure as a contractor under this chapter;
897 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
898 with an application to obtain or renew a license under this chapter;
899 (10) allowing one's license to be used by another except as provided by statute or rule;
900 (11) doing business under a name other than the name appearing on the license, except
901 as permitted by statute or rule;
902 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
903 journeyman plumber, residential journeyman plumber, journeyman electrician, master
904 electrician, or residential electrician, failing to directly supervise an apprentice under one's
905 supervision or exceeding the number of apprentices one is allowed to have under the specialty
906 contractor's supervision;
907 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
908 funds in payment for a specific project from an owner or any other person, which funds are to
909 pay for work performed or materials and services furnished for that specific project, and after
910 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
911 amounts due and payable to persons who performed work or furnished materials or services
912 within a reasonable period of time;
913 (14) employing an unlicensed alarm business or company or an unlicensed individual
914 as an alarm company agent, except as permitted under the exemption from licensure provisions
915 under Section [58-1-307](#);
916 (15) if licensed as an alarm company or alarm company agent, filing with the division
917 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
918 false or fraudulent and intended to mislead the division in its consideration of the applicant for
919 licensure;
920 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
921 (a) the building or construction laws of this state or any political subdivision;
922 (b) the safety and labor laws applicable to a project;
923 (c) any provision of the health laws applicable to a project;
924 (d) the workers' compensation insurance laws of the state applicable to a project;
925 (e) the laws governing withholdings for employee state and federal income taxes,
926 unemployment taxes, Social Security payroll taxes, or other required withholdings; or

- 927 (f) reporting, notification, and filing laws of this state or the federal government;
- 928 (17) aiding or abetting any person in evading the provisions of this chapter or rules
929 established under the authority of the division to govern this chapter;
- 930 ~~[(18) engaging in the construction trade or as a contractor for the construction of~~
931 ~~residences of up to two units when not currently registered or exempt from registration as a~~
932 ~~qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery~~
933 ~~Fund Act;]~~
- 934 ~~[(19) failing, as an original contractor, as defined in Section 38-11-102, to include in a~~
935 ~~written contract the notification required in Section 38-11-108;]~~
- 936 [(20)] (18) wrongfully filing a preconstruction or construction lien in violation of
937 Section 38-1a-308;
- 938 [(21)] (19) if licensed as a contractor, not completing the approved continuing
939 education required under Section 58-55-302.5;
- 940 [(22)] (20) an alarm company allowing an employee with a temporary license under
941 Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the
942 temporary license, as provided in Subsection 58-55-312(3)(a)(ii);
- 943 [(23)] (21) an alarm company agent under a temporary license under Section 58-55-312
944 engaging in conduct outside the scope of the temporary license, as provided in Subsection
945 58-55-312(3)(a)(ii);
- 946 [(24)] (22) (a) an unincorporated entity licensed under this chapter having an individual
947 who owns an interest in the unincorporated entity engage in a construction trade in Utah while
948 not lawfully present in the United States; or
- 949 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
950 providing an individual who owns an interest in the unincorporated entity to engage in a
951 construction trade in Utah while not lawfully present in the United States;
- 952 [(25)] (23) an unincorporated entity failing to provide the following for an individual
953 who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or
954 for an individual who engages, or will engage, in a construction trade in Utah for a separate
955 entity for which the unincorporated entity provides the individual as labor:
- 956 (a) workers' compensation coverage:
- 957 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and

958 Title 34A, Chapter 3, Utah Occupational Disease Act; or

959 (ii) that would be required under the chapters listed in Subsection ~~[(25)]~~ (23)(a)(i) if
960 the unincorporated entity were licensed under this chapter; and

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

965 ~~[(26)]~~ (24) the failure of a sign installation contractor or nonelectrical outdoor
966 advertising sign contractor, as classified and defined in division rules, to:

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

968 (i) the contractor uses; and

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

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

972 ~~[(27)]~~ (25) (a) an unincorporated entity licensed under this chapter having an individual
973 who owns an interest in the unincorporated entity engage in a construction trade in the state
974 while the individual is using a social security number that does not belong to that individual; or

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

979 ~~[(28)]~~ (26) a contractor failing to comply with a requirement imposed by a political
980 subdivision, state agency, or board of education under Section 58-55-310; or

981 ~~[(29)]~~ (27) failing to timely comply with the requirements described in Section
982 58-55-605.

983 Section 14. Section 58-55-502 is amended to read:

984 **58-55-502. Unprofessional conduct.**

985 Unprofessional conduct includes:

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

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

- 989 (a) the building or construction laws of this state or any political subdivision;
- 990 (b) the safety and labor laws applicable to a project;
- 991 (c) any provision of the health laws applicable to a project;
- 992 (d) the workers' compensation insurance laws of this state applicable to a project;
- 993 (e) the laws governing withholdings for employee state and federal income taxes,
- 994 unemployment taxes, Social Security payroll taxes, or other required withholdings; or
- 995 (f) any reporting, notification, and filing laws of this state or the federal government;
- 996 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
- 997 licensee's direction which causes material injury to another;
- 998 (4) contract violations that pose a threat or potential threat to the public health, safety,
- 999 and welfare including:
 - 1000 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
 - 1001 specifications, or abandonment or failure to complete a project without the consent of the
 - 1002 owner or the owner's duly authorized representative or the consent of any other person entitled
 - 1003 to have the particular project completed in accordance with the plans, specifications, and
 - 1004 contract terms;
 - 1005 (b) failure to deposit funds to the benefit of an employee as required under any written
 - 1006 contractual obligation the licensee has to the employee; and
 - 1007 (c) failure to maintain in full force and effect any health insurance benefit to an
 - 1008 employee that was extended as a part of any written contractual obligation or representation by
 - 1009 the licensee, unless the employee is given written notice of the licensee's intent to cancel or
 - 1010 reduce the insurance benefit at least 45 days before the effective date of the cancellation or
 - 1011 reduction;
 - 1012 [~~(d) failure to reimburse the Residence Lien Recovery Fund as required by Section~~
 - 1013 ~~38-11-207;~~]
 - 1014 [~~(e) failure to provide, when applicable, the information required by Section~~
 - 1015 ~~38-11-108; and~~]
 - 1016 [~~(f) willfully or deliberately misrepresenting or omitting a material fact in connection~~
 - 1017 ~~with an application to claim recovery from the Residence Lien Recovery Fund under Section~~
 - 1018 ~~38-11-204;~~]
 - 1019 (5) failing as an alarm company to notify the division of the cessation of performance

1020 of its qualifying agent, or failing to replace its qualifying agent as required under Section
1021 [58-55-304](#);

1022 (6) failing as an alarm company agent to carry or display a copy of the licensee's
1023 license as required under Section [58-55-311](#);

1024 (7) failing to comply with operating standards established by rule in accordance with
1025 Section [58-55-308](#);

1026 (8) an unincorporated entity licensed under this chapter having an individual who owns
1027 an interest in the unincorporated entity engage in a construction trade in Utah while not
1028 lawfully present in the United States;

1029 (9) an unincorporated entity failing to provide the following for an individual who
1030 engages, or will engage, in a construction trade in Utah for the unincorporated entity:

1031 (a) workers' compensation coverage to the extent required by Title 34A, Chapter 2,
1032 Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act; and

1033 (b) unemployment compensation in accordance with Title 35A, Chapter 4,
1034 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
1035 interest in the unincorporated entity, as defined by rule made by the division in accordance with
1036 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

1037 (10) the failure of an alarm company or alarm company agent to inform a potential
1038 customer, before the customer's purchase of an alarm system or alarm service from the alarm
1039 company, of the policy of the county, city, or town within which the customer resides relating
1040 to priority levels for responding to an alarm signal transmitted by the alarm system that the
1041 alarm company provides the customer.

1042 Section 15. Section **58-55-503** is amended to read:

1043 **58-55-503. Penalty for unlawful conduct -- Citations.**

1044 (1) (a) (i) A person who violates Subsection [58-55-308](#)(2), Subsection [58-55-501](#)(1),
1045 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (20), (21), (22), (23), (24), (25), (26), or
1046 (27), [~~(28), or (29)~~], or Subsection [58-55-504](#)(2), or who fails to comply with a citation issued
1047 under this section after it is final, is guilty of a class A misdemeanor.

1048 (ii) As used in this section in reference to Subsection [58-55-504](#)(2), "person" means an
1049 individual and does not include a sole proprietorship, joint venture, corporation, limited
1050 liability company, association, or organization of any type.

1051 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
1052 awarded and may not accept a contract for the performance of the work.

1053 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
1054 infraction unless the violator did so with the intent to deprive the person to whom money is to
1055 be paid of the money received, in which case the violator is guilty of theft, as classified in
1056 Section 76-6-412.

1057 (3) Grounds for immediate suspension of a licensee's license by the division and the
1058 commission include:

1059 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section
1060 58-55-501, or Subsection 58-55-504(2); and

1061 (b) the failure by a licensee to make application to, report to, or notify the division with
1062 respect to any matter for which application, notification, or reporting is required under this
1063 chapter or rules adopted under this chapter, including:

1064 (i) applying to the division for a new license to engage in a new specialty classification
1065 or to do business under a new form of organization or business structure;

1066 (ii) filing a current financial statement with the division; and

1067 (iii) notifying the division concerning loss of insurance coverage or change in qualifier.

1068 (4) (a) If upon inspection or investigation, the division concludes that a person has
1069 violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
1070 (10), (12), (14), (19), (20), (21), (22), (23), (24), (25), (26), or (27), [~~(28)~~, ~~or~~ (~~29~~),] Subsection
1071 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary
1072 action is appropriate, the director or the director's designee from within the division shall
1073 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
1074 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
1075 proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1076 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),
1077 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (20), (21), (22), (23), (24), (25),
1078 (26), or (27), [~~(28)~~, ~~or~~ (~~29~~),] or Subsection 58-55-504(2), as evidenced by an uncontested
1079 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
1080 be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be
1081 ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1),

1082 (2), (3), (9), (10), (12), (14), (19), [~~(21);~~ (22), (23), (24), (25), (26), or (27), [~~(28), or (29);~~] or
1083 Subsection 58-55-504(2).

1084 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
1085 58-55-401 may not be assessed through a citation.

1086 (b) (i) A citation shall be in writing and describe with particularity the nature of the
1087 violation, including a reference to the provision of the chapter, rule, or order alleged to have
1088 been violated.

1089 (ii) A citation shall clearly state that the recipient must notify the division in writing
1090 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
1091 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1092 (iii) A citation shall clearly explain the consequences of failure to timely contest the
1093 citation or to make payment of any fines assessed by the citation within the time specified in
1094 the citation.

1095 (c) A citation issued under this section, or a copy of a citation, may be served upon a
1096 person upon whom a summons may be served:

1097 (i) in accordance with the Utah Rules of Civil Procedure;

1098 (ii) personally or upon the person's agent by a division investigator or by a person
1099 specially designated by the director; or

1100 (iii) by mail.

1101 (d) (i) If within 20 calendar days after the day on which a citation is served, the person
1102 to whom the citation was issued fails to request a hearing to contest the citation, the citation
1103 becomes the final order of the division and is not subject to further agency review.

1104 (ii) The period to contest a citation may be extended by the division for cause.

1105 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
1106 the license of a licensee who fails to comply with a citation after it becomes final.

1107 (f) The failure of an applicant for licensure to comply with a citation after it becomes
1108 final is a ground for denial of license.

1109 (g) A citation may not be issued under this section after the expiration of six months
1110 following the occurrence of a violation.

1111 (h) Except as provided in Subsection (5), the director or the director's designee shall
1112 assess a fine in accordance with the following:

- 1113 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
1114 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
1115 and
1116 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
1117 \$2,000 for each day of continued offense.
- 1118 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
1119 Subsection (4)(h), an offense constitutes a second or subsequent offense if:
- 1120 (A) the division previously issued a final order determining that a person committed a
1121 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
1122 (3), (9), (10), (12), (14), ~~[(19)]~~ (22), (23), (24), (25), (26), or (27), ~~[(28), or (29)]~~, or Subsection
1123 58-55-504(2); or
- 1124 (B) (I) the division initiated an action for a first or second offense;
1125 (II) a final order has not been issued by the division in the action initiated under
1126 Subsection (4)(i)(i)(B)(I);
- 1127 (III) the division determines during an investigation that occurred after the initiation of
1128 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
1129 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
1130 (10), (12), (14), ~~[(19)]~~ (22), (23), (24), (25), (26), or (27), ~~[(28), or (29)]~~, or Subsection
1131 58-55-504(2); and
- 1132 (IV) after determining that the person committed a second or subsequent offense under
1133 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
1134 Subsection (4)(i)(i)(B)(I).
- 1135 (ii) In issuing a final order for a second or subsequent offense under Subsection
1136 (4)(i)(i), the division shall comply with the requirements of this section.
- 1137 (j) In addition to any other licensure sanction or fine imposed under this section, the
1138 division shall revoke the license of a licensee that violates Subsection 58-55-501 ~~[(24) or~~
1139 ~~(25)]~~(22) or (23) two or more times within a 12-month period, unless, with respect to a
1140 violation of Subsection 58-55-501(24), the licensee can demonstrate that the licensee
1141 successfully verified the federal legal working status of the individual who was the subject of
1142 the violation using a status verification system, as defined in Section 13-47-102.
- 1143 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501 ~~[(24) or~~

1144 ~~(25)~~(22) or (23) for each individual is considered a separate violation.

1145 (5) If a person violates Section 58-55-501, the division may not treat the violation as a
1146 subsequent violation of a previous violation if the violation occurs five years or more after the
1147 day on which the person committed the previous violation.

1148 (6) If, after an investigation, the division determines that a person has committed
1149 multiple of the same type of violation of Section 58-55-501, the division may treat each
1150 violation as a separate violation of Section 58-55-501 and apply a penalty under this section to
1151 each violation.

1152 (7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
1153 into the Commerce Service Account created by Section 13-1-2.

1154 (b) A penalty that is not paid may be collected by the director by either referring the
1155 matter to a collection agency or bringing an action in the district court of the county in which
1156 the person against whom the penalty is imposed resides or in the county where the office of the
1157 director is located.

1158 (c) A county attorney or the attorney general of the state is to provide legal assistance
1159 and advice to the director in any action to collect the penalty.

1160 (d) In an action brought to enforce the provisions of this section, the court shall award
1161 reasonable attorney fees and costs to the prevailing party.

1162 Section 16. Section 58-56-9 is amended to read:

1163 **58-56-9. Qualifications of inspectors -- Contract for inspection services.**

1164 (1) An inspector employed by a local regulator, state regulator, or compliance agency
1165 to enforce the codes shall:

1166 (a) (i) meet minimum qualifications as established by the division in collaboration with
1167 the commission;

1168 (ii) be certified by a nationally recognized organization which promulgates
1169 construction codes; or

1170 (iii) pass an examination developed by the division in collaboration with the
1171 commission;

1172 (b) be currently licensed by the division as meeting those minimum qualifications; and

1173 (c) be subject to revocation or suspension of the inspector's license or being placed on
1174 probation if found guilty of unlawful or unprofessional conduct.

1175 (2) A local regulator, state regulator, or compliance agency may contract for the
1176 services of a licensed inspector not regularly employed by the regulator or agency.

1177 (3) In accordance with Section 58-1-401, the division may:

1178 (a) refuse to issue a license to an applicant;

1179 (b) refuse to renew the license of a licensee;

1180 (c) revoke, suspend, restrict, or place on probation the license of a licensee;

1181 (d) issue a public or private reprimand;

1182 (e) issue a citation to a licensee; and

1183 (f) issue a cease and desist order.

1184 Section 17. Section 58-56-9.3 is amended to read:

1185 **58-56-9.3. Unprofessional conduct.**

1186 Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

1187 (1) knowingly failing to inspect or issue correction notices for code violations which
1188 when left uncorrected would constitute a hazard to the public health and safety and knowingly
1189 failing to require that correction notices are complied with as a building inspector;

1190 (2) the use of alcohol or the illegal use of drugs while performing duties as a building
1191 inspector or at any time to the extent that the inspector is physically or mentally impaired and
1192 unable to effectively perform the duties of an inspector;

1193 (3) gross negligence in the performance of official duties as a building inspector;

1194 (4) the personal use of information or knowingly revealing information to unauthorized
1195 persons when that information has been obtained by a building inspector as a result of the
1196 inspector's employment, work, or position as an inspector;

1197 (5) unlawful acts or practices which are clearly unethical under generally recognized
1198 standards of conduct of a building inspector;

1199 (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance
1200 of duties and responsibilities as a building inspector;

1201 (7) a building inspector knowingly failing to require that all plans, specifications,
1202 drawings, documents, and reports be stamped by architects, professional engineers, or both as
1203 established by law;

1204 (8) a building inspector knowingly failing to report to the division an act or omission of
1205 a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when

1206 left uncorrected constitutes a hazard to public health and safety;

1207 (9) a building inspector knowingly failing to report to the division unlicensed practice
1208 persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades
1209 Licensing Act;

1210 (10) a building inspector's approval of work which materially varies from approved
1211 documents that have been stamped by an architect, professional engineer, or both unless
1212 authorized by the licensed architect, professional engineer, or both;

1213 (11) a building inspector failing to produce verification of current licensure and current
1214 certifications for the codes upon request of the division, a compliance agency, or a contractor
1215 or property owner whose work is being inspected;

1216 (12) a building inspector requiring work that materially varies from the building codes
1217 adopted by the state;

1218 [~~12~~] (13) nondelivery of goods or services by a registered dealer which constitutes a
1219 breach of contract by the dealer;

1220 [~~13~~] (14) the failure of a registered dealer to pay a subcontractor or supplier any
1221 amounts to which that subcontractor or supplier is legally entitled; and

1222 [~~14~~] (15) any other activity which is defined as unprofessional conduct by division
1223 rule in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative
1224 Rulemaking Act.

1225 Section 18. Section **58-56-9.4** is enacted to read:

1226 **58-56-9.4. Investigation of regulated activity.**

1227 (1) The division is responsible for the investigation of a person or an activity that
1228 violates the provisions of this chapter.

1229 (2) An investigation by the division may include:

1230 (a) a requirement that potential administrative appeals described in Section [15A-1-207](#)
1231 have been exhausted before conducting the investigation;

1232 (b) an investigation of a person engaged in unlawful or unprofessional conduct; and

1233 (c) a referral to the Uniform Building Code Commission to review a dispute involving
1234 an application or interpretation of a building code or construction law by a licensee.

1235 Section 19. Section **58-56-9.5** is amended to read:

1236 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

1237 (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with
1238 a citation issued under this section after it is final is guilty of a class A misdemeanor.

1239 (2) Grounds for immediate suspension of a licensee's license by the division under this
1240 chapter include:

1241 (a) the issuance of a citation for violation of a provision of Section 58-56-9.1 or
1242 58-56-9.3; and

1243 (b) failure by a licensee to make application to, report to, or notify the division with
1244 respect to a matter for which application, notification, or reporting is required under this
1245 chapter or rules made under this chapter by the division.

1246 (3) (a) If upon inspection or investigation, the division concludes that a person has
1247 violated a provision of Section 58-56-9.1 or 58-56-9.3, or a rule or order issued with respect to
1248 that section, and that disciplinary action is appropriate, the director or the director's designee
1249 from within the division shall:

1250 (i) promptly issue a citation to the person according to this chapter and any pertinent
1251 rules;

1252 (ii) attempt to negotiate a stipulated settlement; or

1253 (iii) notify the person to appear before an adjudicative proceeding conducted under
1254 Title 63G, Chapter 4, Administrative Procedures Act.

1255 (b) (i) A person who violates a provision of Section 58-56-9.1 or 58-56-9.3, as
1256 evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an
1257 adjudicative proceeding, may be assessed a fine under this Subsection (3)(b) and may, in
1258 addition to or instead of the fine, be ordered by the division to cease from violating the
1259 provision.

1260 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
1261 licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.

1262 (c) (i) Each citation shall be in writing and describe with particularity the nature of the
1263 violation, including a reference to the provision of the chapter, rule, or order alleged to have
1264 been violated.

1265 (ii) The citation shall clearly state that the recipient must notify the division in writing
1266 within 20 calendar days of service of the citation if the recipient wishes to contest the citation
1267 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1268 (iii) The citation shall clearly explain the consequences of failure to timely contest the
1269 citation or to make payment of any fines assessed by the citation within the time specified in
1270 the citation.

1271 (d) Each citation issued under this section, or a copy of each citation, may be served
1272 upon any person upon whom a summons may be served:

1273 (i) in accordance with the Utah Rules of Civil Procedure;

1274 (ii) personally or upon the person's agent by a division investigator or by any person
1275 specially designated by the director; or

1276 (iii) by mail.

1277 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
1278 citation was issued fails to request a hearing to contest the citation, the citation becomes the
1279 final order of the division and is not subject to further agency review.

1280 (ii) The period to contest a citation may be extended by the division for cause.

1281 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
1282 the license of a licensee who fails to comply with a citation after it becomes final.

1283 (g) The failure of an applicant for licensure to comply with a citation after it becomes
1284 final is a ground for denial of a license.

1285 (h) No citation may be issued under this section after the expiration of six months
1286 following the occurrence of the violation.

1287 (i) The director or the director's designee may assess fines for violations of Section
1288 [58-56-9.1](#) or [58-56-9.3](#) as follows:

1289 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;

1290 (ii) for a second offense, a fine of up to \$2,000; and

1291 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
1292 offense.

1293 (j) For the purposes of issuing a final order under this section and assessing a fine
1294 under Subsection (3)(i), an offense constitutes a second or subsequent offense if:

1295 (i) the division previously issued a final order determining that a person committed a
1296 first or second offense in violation of a provision of Section [58-56-9.1](#); or

1297 (ii) (A) the division initiated an action for a first or second offense;

1298 (B) no final order has been issued by the division in the action initiated under

1299 Subsection (3)(j)(ii)(A);

1300 (C) the division determines during an investigation that occurred after the initiation of
1301 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
1302 violation of a provision of Section [58-56-9.1](#); and

1303 (D) after determining that the person committed a second or subsequent offense under
1304 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under
1305 Subsection (3)(j)(ii)(A).

1306 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
1307 the division shall comply with the requirements of this section.

1308 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
1309 Commerce Service Account created by Section [13-1-2](#).

1310 (b) The director may collect an unpaid fine by:

1311 (i) referring the matter to a collection agency; or

1312 (ii) bringing an action in the district court of the county in which the person resides or
1313 in the county where the director's office is located.

1314 (c) (i) The state's attorney general or a county attorney shall provide legal assistance
1315 and advice to the director in an action brought under Subsection (4)(b).

1316 (ii) Reasonable attorney fees and costs shall be awarded in an action brought to enforce
1317 the provisions of this section.

1318 Section 20. Section **63I-2-238** is enacted to read:

1319 **63I-2-238. Repeal dates -- Title 38.**

1320 Section [38-11-103](#) is repealed January 1, 2019.

1321 Section 21. Section **63J-1-504** is amended to read:

1322 **63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and**
1323 **assessing fees without legislative approval.**

1324 (1) As used in this section:

1325 (a) (i) "Agency" means each department, commission, board, council, agency,
1326 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
1327 unit, bureau, panel, or other administrative unit of the state.

1328 (ii) "Agency" does not mean the Legislature or its committees.

1329 (b) "Fee agency" means any agency that is authorized to establish fees.

1330 (c) "Fee schedule" means the complete list of fees charged by a fee agency and the
1331 amount of those fees.

1332 (2) Each fee agency shall adopt a schedule of fees assessed for services provided by the
1333 fee agency that are:

1334 (a) reasonable, fair, and reflect the cost of services provided; and

1335 (b) established according to a cost formula determined by the executive director of the
1336 Governor's Office of Management and Budget and the director of the Division of Finance in
1337 conjunction with the agency seeking to establish the fee.

1338 (3) Except as provided in Subsection (6), a fee agency may not:

1339 (a) set fees by rule; or

1340 (b) create, change, or collect any fee unless the fee has been established according to
1341 the procedures and requirements of this section.

1342 (4) Each fee agency that is proposing a new fee or proposing to change a fee shall:

1343 (a) present each proposed fee at a public hearing, subject to the requirements of Title
1344 52, Chapter 4, Open and Public Meetings Act;

1345 (b) increase, decrease, or affirm each proposed fee based on the results of the public
1346 hearing;

1347 (c) except as provided in Subsection (6), submit the fee schedule to the Legislature as
1348 part of the agency's annual appropriations request; and

1349 (d) where necessary, modify the fee schedule to implement the Legislature's actions.

1350 (5) (a) Each fee agency shall submit its fee schedule or special assessment amount to
1351 the Legislature for its approval on an annual basis.

1352 (b) The Legislature may approve, increase or decrease and approve, or reject any fee
1353 submitted to it by a fee agency.

1354 (6) After conducting the public hearing required by this section, a fee agency may
1355 establish and assess fees without first obtaining legislative approval if:

1356 (a) (i) the Legislature creates a new program that is to be funded by fees to be set by the
1357 Legislature;

1358 (ii) the new program's effective date is before the Legislature's next annual general
1359 session; and

1360 (iii) the fee agency submits the fee schedule for the new program to the Legislature for

1361 its approval at a special session, if allowed in the governor's call, or at the next annual general
1362 session of the Legislature, whichever is sooner; or

1363 ~~[(b) the Division of Occupational and Professional licensing makes a special~~
1364 ~~assessment against qualified beneficiaries under the Residence Lien Restriction and Lien~~
1365 ~~Recovery Fund Act as provided in Subsection 38-11-206(1); or]~~

1366 [(e)] (b) (i) the fee agency proposes to increase or decrease an existing fee for the
1367 purpose of adding or removing a transactional fee that is charged or assessed by a
1368 non-governmental third party but is included as part of the fee charged by the fee agency;

1369 (ii) the amount of the increase or decrease in the fee is equal to the amount of the
1370 transactional fee charged or assessed by the non-governmental third party; and

1371 (iii) the increased or decreased fee is submitted to the Legislature for its approval at a
1372 special session, if allowed in the governor's call, or at the next annual session of the
1373 Legislature, whichever is sooner.

1374 (7) (a) Each fee agency that wishes to change any fee shall submit to the governor as
1375 part of the agency's annual appropriation request a list that identifies:

1376 (i) the title or purpose of the fee;

1377 (ii) the present amount of the fee;

1378 (iii) the proposed new amount of the fee;

1379 (iv) the percent that the fee will have increased if the Legislature approves the higher
1380 fee;

1381 (v) the estimated total annual revenue change that will result from the change in the
1382 fee;

1383 (vi) the account or fund into which the fee will be deposited; and

1384 (vii) the reason for the change in the fee.

1385 (b) (i) The governor may review and approve, modify and approve, or reject the fee
1386 increases.

1387 (ii) The governor shall transmit the list required by Subsection (7)(a), with any
1388 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

1389 (c) Bills approving any fee change shall be filed before the beginning of the
1390 Legislature's annual general session, if possible.

1391 (8) (a) Except as provided in Subsection (8)(b), the School and Institutional Trust

1392 Lands Administration, established in Section 53C-1-201, is exempt from the requirements of
1393 this section.

1394 (b) The following fees of the School and Institutional Trust Lands Administration are
1395 subject to the requirements of this section: application, assignment, amendment, affidavit for
1396 lost documents, name change, reinstatement, grazing nonuse, extension of time, partial
1397 conveyance, patent reissue, collateral assignment, electronic payment, and processing.

1398 Section 22. **Repealer.**

1399 This bill repeals:

1400 Section 38-11-101, **Title.**

1401 Section 38-11-102, **Definitions.**

1402 Section 38-11-104, **Board.**

1403 Section 38-11-105, **Procedures established by rule.**

1404 Section 38-11-106, **State not liable.**

1405 Section 38-11-107, **Restrictions upon maintaining a lien against residence or**
1406 **owner's interest in the residence.**

1407 Section 38-11-108, **Notification of rights under chapter.**

1408 Section 38-11-109, **Severability clause.**

1409 Section 38-11-110, **Issuance of certificates of compliance.**

1410 Section 38-11-201, **Residence Lien Recovery Fund.**

1411 Section 38-11-202, **Payments to the fund.**

1412 Section 38-11-203, **Disbursements from the fund -- Limitations.**

1413 Section 38-11-204, **Claims against the fund -- Requirements to make a claim --**
1414 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
1415 **compliance.**

1416 Section 38-11-205, **Subrogation.**

1417 Section 38-11-206, **Limitations on fund balance -- Payment of special assessments.**

1418 Section 38-11-207, **Reimbursement to the fund.**

1419 Section 38-11-301, **Registration as a qualified beneficiary -- Initial regular**
1420 **assessment -- Affidavit.**

1421 Section 38-11-302, **Effective date and term of registration -- Penalty for failure to**
1422 **pay assessments -- Reinstatement.**

1423 Section 23. **Effective date.**
1424 This bill takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel