

HB0310S02 compared with HB0310

~~{deleted text}~~ shows text that was in HB0310 but was deleted in HB0310S02.

Inserted text shows text that was not in HB0310 but was inserted into HB0310S02.

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Representative Mike Schultz proposes the following substitute bill:

PROFESSIONAL LICENSING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals substantive provisions of 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 substantive provisions of 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:

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None

Other Special Clauses:

~~{ This bill provides a special effective date. }~~ None

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

38-1a-701, as renumbered and amended by Laws of Utah 2012, Chapter 278

38-1a-706, as enacted by Laws of Utah 2012, Chapter 278

38-1a-707, as renumbered and amended by Laws of Utah 2012, Chapter 278

38-11-103, as last amended by Laws of Utah 1995, Chapter 172

38-11-104, as last amended by Laws of Utah 2004, Chapter 42

38-11-106, as last amended by Laws of Utah 2004, Chapter 42

38-11-201, as last amended by Laws of Utah 2013, Chapter 400

38-11-203, as last amended by Laws of Utah 2016, Chapter 238

38-11-204, as last amended by Laws of Utah 2017, Chapter 373

38-12-102, as last amended by Laws of Utah 2014, Chapter 129

58-55-103, as last amended by Laws of Utah 2016, Chapter 25

58-55-302, as last amended by Laws of Utah 2017, Chapter 411

58-55-303, as last amended by Laws of Utah 2013, Chapter 57

58-55-401, as last amended by Laws of Utah 2011, Chapter 413

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

58-55-502, as last amended by Laws of Utah 2011, Chapters 170 and 413

58-55-503, as last amended by Laws of Utah 2017, Chapter 339

58-56-9, as last amended by Laws of Utah 2011, Chapter 14

58-56-9.3, as last amended by Laws of Utah 2010, Chapter 310

58-56-9.5, as last amended by Laws of Utah 2010, Chapter 278

63J-1-504, as last amended by Laws of Utah 2013, Chapter 310

ENACTS:

58-56-9.4, Utah Code Annotated 1953

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63I-2-238, Utah Code Annotated 1953

REPEALS:

38-11-101, as enacted by Laws of Utah 1994, Chapter 308

38-11-102, as last amended by Laws of Utah 2014, Chapter 108

~~{ 38-11-104, as last amended by Laws of Utah 2004, Chapter 42~~

~~— 38-11-105, as last amended by Laws of Utah 2008, Chapter 382~~

~~— 38-11-106, as last amended by Laws of Utah 2004, Chapter 42~~

‡ 38-11-107, as last amended by Laws of Utah 2012, Chapter 278

38-11-108, as last amended by Laws of Utah 2008, Chapter 382

38-11-109, as enacted by Laws of Utah 1999, Chapter 193

38-11-110, as last amended by Laws of Utah 2010, Chapter 31

~~{ 38-11-201, as last amended by Laws of Utah 2013, Chapter 400~~

‡ 38-11-202, as last amended by Laws of Utah 2009, Chapter 183

~~{ 38-11-203, as last amended by Laws of Utah 2016, Chapter 238~~

~~— 38-11-204, as last amended by Laws of Utah 2017, Chapter 373~~

‡ 38-11-205, as last amended by Laws of Utah 1999, Chapter 193

38-11-206, as last amended by Laws of Utah 2011, Chapter 367

38-11-207, as last amended by Laws of Utah 2008, Chapter 382

38-11-301, as last amended by Laws of Utah 2009, Chapter 183

38-11-302, as last amended by Laws of Utah 2009, Chapter 183

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

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

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

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

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

(3) (a) A construction lien may include an amount claimed for a preconstruction

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service.

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

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

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

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

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

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

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

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

(ii) a statement that the claimant claims a preconstruction lien;

(iii) the date the claimant's notice of preconstruction service was filed;

(iv) the name of the person that employed the claimant;

(v) a general description of the preconstruction service provided by the claimant;

(vi) the date that the claimant last provided preconstruction service;

(vii) the name, if known, of the reputed owner or, if not known, the name of the record owner;

(viii) a description of the project property sufficient for identification;

(ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the claimant;

(x) the claimant's signature or the signature of the claimant's authorized agent; and

(xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents[; ~~and~~].

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

(b) (i) A claimant who is an original contractor or a supervising subcontractor may

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include in a notice of preconstruction lien the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.

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

(4) (a) A county recorder:

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

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

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

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

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

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

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

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

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

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

(i) 180 days after the date on which final completion of the original contract occurs, if

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no notice of completion is filed under Section 38-1a-507; or

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

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

(2) A notice of construction lien shall contain:

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

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

(c) the time when the claimant first and last provided construction work;

(d) a description of the project property, sufficient for identification;

(e) the name, current address, and current phone number of the claimant;

(f) the amount claimed under the construction lien;

(g) the signature of the claimant or the claimant's authorized agent; and

(h) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents[~~; and~~].

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

(3) (a) A county recorder:

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

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

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

(4) (a) Within 30 days after filing a notice of construction lien, the claimant shall

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deliver or mail by certified mail a copy of the notice to the reputed owner or the record owner.

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

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

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

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

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

(1) As used in this section:

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

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

(a) "Owner" means a person who:

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

(A) owns; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(i) instructions to the owner of the residence relating to the owner's rights under Title~~

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~~38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The court shall award a subcontractor with a valid preconstruction or construction

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lien:

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

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

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

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

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

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

(3) (a) A person against whom an action is brought to enforce a preconstruction or construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure.

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

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

38-11-103. Administration.

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

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

~~(3) Any money remaining in the Residence Lien Recovery Fund on July 1, 2018, shall be transferred to the General Fund.~~ may not accept an application for a claim against the fund filed with the division after May 9, 2018.

Section 8. Section **38-11-104** is amended to read:

38-11-104. Board.

(1) There is created the Residence Lien Recovery Fund Advisory Board consisting of:

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(a) three individuals licensed as a contractor who are actively engaged in construction on owner-occupied residences;

(b) three individuals who are employed in responsible management positions with major suppliers of materials or equipment used in the construction on owner-occupied residences; and

(c) one member from the general public who has no interest in the construction on owner-occupied residences, or supply of materials used in the construction on owner-occupied residences.

(2) The board shall be appointed and members shall serve their respective terms in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be to:

(a) advise the division with respect to informal adjudication of any claim for payment from the fund and any request for a certificate of compliance where a completed application was received by the division on or before May 9, 2018;

(b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings held before the division with respect to any claim made for payment from the fund where a completed application was received by the division on or before May 9, 2018;

(c) advise the division with respect to:

(i) the general operation of the fund;

(ii) the amount and frequency of any assessment under this chapter;

(iii) the amount of any fees required under this chapter;

(iv) the availability and advisability of using funds for purchase of surety bonds to guarantee payment to qualified beneficiaries; and

(v) the limitation on the fund balance under Section 38-11-206; and

(d) review the administrative expenditures made by the division pursuant to Subsection 38-11-201(4) and report its findings regarding those expenditures to the executive director on or before the first Monday of December of each year.

(4) The attorney general shall render legal assistance as requested by the board.

Section 9. Section 38-11-106 is amended to read:

38-11-106. State not liable.

The state and the state's agencies, instrumentalities, and political subdivisions are not

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liable for:

- (1) issuance or denial of any certificate of compliance;
- (2) any claims made against the fund; ~~[or]~~
- (3) failure of the fund to pay any amounts ordered by the director to be paid from the

fund~~[-]; or~~

(4) failure of the fund to pay any amounts from an application for a claim against the fund filed with the division after May 9, 2018.

Section 10. Section 38-11-201 is amended to read:

38-11-201. Residence Lien Recovery Fund.

(1) There is created an expendable special revenue fund called the "Residence Lien Recovery Fund."

(2) (a) The fund consists of all amounts collected by the division in accordance with Section 38-11-202.

(b) (i) The division shall deposit the funds in an account with the state treasurer.

(ii) The division shall record the funds in the Residence Lien Recovery Fund.

(c) The fund shall earn interest.

(3) The division shall employ personnel and resources necessary to administer the fund and shall use fund money in accordance with Sections 38-11-203 and 38-11-204 and to pay the costs charged to the fund by the attorney general.

(4) Costs incurred by the division for administering the fund shall be paid out of fund money.

(5) The Division of Finance shall report annually to the Legislature, the division, and the board. The report shall state:

- (a) amounts received by the fund;
- (b) disbursements from the fund;
- (c) interest earned and credited to the fund; and
- (d) the fund balance.

~~[(6) (a) For purposes of establishing and assessing fees under Section 63J-1-504, the provisions of this chapter are considered a new program for fiscal year 1995-96.]~~

~~[(b) The department shall submit its fee schedule to the Legislature for its approval at the 1996 Annual General Session.]~~

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(6) The division may use money from the fund to provide education to the public regarding:

(a) changes to the Residence Lien Restriction and Lien Recovery Fund Act; and

(b) the use of the State Construction Registry created in Section 38-1a-201.

Section 11. Section 38-11-203 is amended to read:

38-11-203. Disbursements from the fund -- Limitations.

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

(a) the claimant was a qualified beneficiary during the construction on a residence;

(b) the claimant complied with the requirements of Section 38-11-204, including that a completed application was filed with the division on or before May 9, 2018;

(c) there is adequate money in the fund to pay the amount ordered; and

(d) the claimant provided the qualified services that are the basis of the claim.

(2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:

(a) the laborer complied with the requirements of Subsection 38-11-204(7); and

(b) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

(b) The director shall order payment of the qualified services as established by evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified services in the judgment to the extent the qualified services are attributable to the owner-occupied residence at issue in the claim.

(c) The director shall order payment of interest on amounts claimed for qualified services based on the current prime interest rate at the time payment was due to the date the claim is approved for payment except for delays attributable to the claimant but not more than 10% per annum.

(d) The rate shall be the prime lending rate as published in the Wall Street Journal on the first business day of each calendar year adjusted annually.

(e) The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the

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director shall order payment of reasonable costs as supported by evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

(f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount stated in a judgment, or if no judgment has been obtained but the contract provides for attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be paid by the director.

(4) (a) Payments made from the fund may not exceed \$75,000 per construction project to qualified beneficiaries and laborers who have claim against the fund for that construction project.

(b) If claims against the fund for a construction project exceed \$75,000, the \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.

(5) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.

(6) (a) A payment of any claim upon the fund may not be made to an assignee or transferee unless an order issued by the director finds that:

(i) the claim is assigned or transferred to a person who is a qualified beneficiary; and

(ii) the person assigning or transferring the claim:

(A) was a qualified beneficiary during the construction on a residence; and

(B) provided the qualified services that are the basis of the claim.

(b) A claimant who is an assignee or transferee of a claim upon the fund under this Subsection (6) does not have to meet the requirements of Subsections 38-11-203(1)(a) and (d).

Section 12. Section 38-11-204 is amended to read:

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

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- (1) To claim recovery from the fund a person shall:
 - (a) meet the requirements of Subsection (4) or (6);
 - (b) pay an application fee determined by the division under Section 63J-1-504; and
 - (c) file with the division, on or before May 9, 2018, a completed application on a form provided by the division accompanied by supporting documents establishing:
 - (i) that the person meets the requirements of Subsection (4) or (6);
 - (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
 - (iii) the basis for the claim.
- (2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:
 - (a) from the date the judgment required by Subsection (4)(d) is entered;
 - (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
 - (c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.
- (3) The issuance of a certificate of compliance is governed by Section 38-11-110.
- (4) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:
 - (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:
 - (A) for the performance of qualified services;
 - (B) to obtain the performance of qualified services by others; or
 - (C) for the supervision of the performance by others of qualified services in construction on that residence;
 - (ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence;or

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(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built housing retailer for the purchase of an owner-occupied residence;

(b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;

(c) (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

(d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);

(ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) the qualified beneficiary has:

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(A) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;

(B) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b);

(C) made reasonable efforts to obtain asset information from the supplemental proceedings; and

(D) if assets subject to execution are discovered as a result of the order required under this Subsection (4)(d)(iii) or for any other reason, obtained the issuance of a writ of execution from a court of competent jurisdiction; and

(iv) if the nonpaying party has filed bankruptcy, the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action;

(e) the qualified beneficiary is not entitled to reimbursement from any other person; and

(f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

(6) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

(a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

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(b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(9) The director shall have equitable power to determine if the requirements of Subsections (4)(a), (b), and (f) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.

Section ~~8~~13. Section **38-12-102** is amended to read:

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

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

(a) a county recorder;

(b) a county clerk;

(c) a clerk of the court; or

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

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

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

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

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

(B) the amount of state taxes owed, if the lien is based on unpaid state taxes;

(C) the total amount of the unpaid assessment that is subject to the lien, including any fees, charges, or costs, if the lien is based on an unpaid assessment under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act; or

(D) the amount of the unpaid fine, if the lien is based on an unpaid fine under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association

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Act; and

(iv) (A) the name, address, and phone number of the lien claimant; or

(B) if the lien claimant has a representative for purposes of the lien, the name of the lien claimant and the name, address, and phone number of the lien claimant's representative.

(b) When a lien claimant mails a copy of a notice of lien to the person against whom the notice of lien is filed, in accordance with Subsection (1), the notice of lien shall contain:

(i) the requirements described in Subsection (2)(a);

(ii) the date the notice of lien was submitted for recording; and

(iii) the article number on the certified mail receipt.

(3) The notice requirements of Subsections (1) and (2) do not apply to:

(a) a preconstruction or construction lien as provided in Title 38, Chapter 1a,

Preconstruction and Construction Liens;

(b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

(c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

(d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;

(e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service Storage Facilities;

(f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;

~~[(g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;]~~

~~[(h)] (g) a trust deed;~~

~~[(i)] (h) a mortgage;~~

~~[(j)] (i) any interests subject to a security agreement as defined in Section 70A-9a-102;~~

~~[(k)] (j) any other liens subject to the same or stricter notice requirements than those imposed by Subsections (1) and (2); or~~

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

Section ~~9~~14. Section 58-55-103 is amended to read:

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

Appointment -- Qualifications and terms of members -- Vacancies -- Expenses -- Meetings

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-- Concurrence.

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

(b) The commission shall:

(i) with the concurrence of the director, make reasonable rules under Title 63G,

Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter which are consistent with this chapter including:

(A) licensing of various licensees;

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

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

(D) standards of conduct for various licensees;

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

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

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

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

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

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

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

(2) (a) Initially the commission shall be comprised of the five members of the Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.

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

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

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groups:

- (i) one member shall be a licensed general engineering contractor;
- (ii) one member shall be a licensed general building contractor;
- (iii) two members shall be licensed residential and small commercial contractors;
- (iv) three members shall be the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board; and
- (v) two members shall be from the general public, provided, however that the certified public accountant on the Contractors Licensing Board will continue to serve until the current term expires, after which both members under this Subsection (2)(c)(v) shall be appointed from the general public.

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

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

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

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

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

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

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) (a) The commission shall meet at least monthly unless the director determines otherwise.

(b) The director may call additional meetings at the director's discretion, upon the

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request of the chair, or upon the written request of four or more commission members.

(8) (a) Five members constitute a quorum for the transaction of business.

(b) If a quorum is present when a vote is taken, the affirmative vote of commission members present is the act of the commission.

(9) The commission shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of its adjudicative proceedings.

(10) (a) For purposes of this Subsection (10), "concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

(b) If a provision of this chapter requires concurrence between the director or division and the commission and no concurrence can be reached, the director or division has final authority.

(c) When this chapter requires concurrence between the director or division and the commission:

(i) the director or division shall report to and update the commission on a regular basis related to matters requiring concurrence; and

(ii) the commission shall review the report submitted by the director or division under this Subsection (10)(c) and concur with the report, or:

(A) provide a reason for not concurring with the report; and

(B) provide recommendations to the director or division.

Section ~~410~~15. Section **58-55-302** is amended to read:

58-55-302. Qualifications for licensure.

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

(a) submit an application prescribed by the division;

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

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

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

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- (d) if an apprentice, identify the proposed supervisor of the apprenticeship;
- (e) if an applicant for a contractor's license:
 - (i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;
 - (ii) produce satisfactory evidence of:
 - (A) except as provided in Subsection (2)(a), and except that no employment experience is required for licensure as a specialty contractor, two years full-time paid employment experience in the construction industry, which employment experience may be related to any contracting classification unless more specifically described in this section; and
 - (B) knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare;
 - (iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a 25-hour course established by rule by the commission with the concurrence of the director, which is taught by an approved prelicensure course provider, and which course may include:
 - (A) construction business practices;
 - (B) bookkeeping fundamentals;
 - (C) mechanics lien fundamentals;
 - (D) other aspects of business and construction principles considered important by the commission with the concurrence of the director; and
 - (E) for no additional fee, an examination at the end of the 25-hour course;
 - (iv) (A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;
 - (B) be a licensed master plumber if an applicant for a plumbing contractor's license or a licensed master residential plumber if an applicant for a residential plumbing contractor's license; or
 - (C) be a licensed elevator mechanic and produce satisfactory evidence of three years experience as an elevator mechanic if an applicant for an elevator contractor's license; and
 - (v) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant as of the day on which the

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application is filed that includes for each individual:

- (A) the individual's name, address, birth date, and social security number; and
- (B) whether the individual will engage in a construction trade; and
- (f) if an applicant for a construction trades instructor license, satisfy any additional

requirements established by rule.

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

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

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

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

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

(A) Department of Commerce;

(B) Division of Corporations and Commercial Code;

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

(D) State Tax Commission; and

(E) Internal Revenue Service.

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

(a) (i) A master plumber shall produce satisfactory evidence that the applicant:

(A) has been a licensed journeyman plumber for at least two years and had two years of supervisory experience as a licensed journeyman plumber in accordance with division rule;

(B) has received at least an associate of applied science degree or similar degree

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following the completion of a course of study approved by the division and had one year of supervisory experience as a licensed journeyman plumber in accordance with division rule; or

(C) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(a)(i)(A) or (B).

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

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

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

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

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

(i) has been a licensed residential journeyman plumber for at least two years and had two years of supervisory experience as a licensed residential journeyman plumber in accordance with division rule; or

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

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

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed master

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plumber or journeyman plumber and in accordance with a planned program of training approved by the division;

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

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

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

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

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

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

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

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

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

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

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

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division,

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and has two years of practical experience as a licensed journeyman electrician;

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

(i) A licensed apprentice electrician shall be under the immediate supervision of a

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licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

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

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

(k) An alarm company applicant shall:

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

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

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

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

(ii) if a corporation, provide:

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

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

(iii) if a limited liability company, provide:

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

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

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

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

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

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

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

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

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

(A) comprehensive general liability insurance in form and in amounts to be established by rule by the commission with the concurrence of the director;

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

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

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(I) Division of Corporations and Commercial Code;

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

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(xi) meet with the division and board.

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

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

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

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

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

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

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

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

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

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

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

(ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing,

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repairing, or maintaining an elevator, the contractor may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) specify each addition or deletion of an owner:

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

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

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(ii) be in a format prescribed by the division that includes for each owner, regardless of the owner's percentage ownership in the unincorporated entity, the information described in Subsection(1)(e)(v);

(iii) list the name of:

(A) each officer or manager of the unincorporated entity; and

(B) each other individual involved in the operation, supervision, or management of the unincorporated entity; and

(iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

(c) The division may, at any time, audit an ownership status report under this Subsection (10):

(i) to determine if financial responsibility has been demonstrated or maintained as required under Section 58-55-306; and

(ii) to determine compliance with Subsection 58-55-501[(24), (25), or (27)](22), (23), or (25) or Subsection 58-55-502(8) or (9).

(11) (a) An unincorporated entity that provides labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah shall file with the division:

(i) before the individual who owns an interest in the unincorporated entity engages in a construction trade in Utah, a current list of the one or more individuals who hold an ownership interest in the unincorporated entity that includes for each individual:

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

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

(ii) every 30 days after the day on which the unincorporated entity provides the list described in Subsection (11)(a)(i), an ownership status report containing the information that would be required under Subsection (10) if the unincorporated entity were a licensed contractor.

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

(12) This chapter may not be interpreted to create or support an express or implied

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independent contractor relationship between an unincorporated entity described in Subsection (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax withholding.

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

Section ~~44~~16. Section **58-55-303** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) if the licensee is an apprentice electrician or plumber, journeyman electrician or

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plumber, master electrician or plumber, residential journeyman electrician or plumber, or residential master electrician or plumber, completion of the number of hours of continuing education specified under Section 58-55-302.7.

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

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

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

- (a) ~~shall~~ pay in full all fines imposed by the division;
- (b) resolve any outstanding citations or disciplinary actions with the division;
- (c) satisfy any Section 58-55-503 judgment and sentence or nontrial resolution; and
- (d) complete a new financial responsibility review as required under Section 58-55-306, using only titled assets~~;~~ and.

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

Section ~~{12}~~17. Section **58-55-401** is amended to read:

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

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

- (a) refuse to issue a license to an applicant;
- (b) refuse to renew the license of a licensee;

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

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

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

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

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

- (a) the applicant or licensee is an unincorporated entity; and
- (b) an individual who holds an ownership interest in the applicant or licensee engages

in:

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- (i) unlawful conduct as described in Section 58-55-501; or
- (ii) unprofessional conduct as described in Section 58-55-502.

Section ~~13~~18. Section **58-55-501** is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

- (1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;
- (2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;
- (3) hiring or employing a person who is not licensed under this chapter to perform work on a project, unless the person:
 - (a) is an employee of a person licensed under this chapter for wages; and
 - (b) is not required to be licensed under this chapter;
- (4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;
- (5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;
- (6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;
- (7) failing to obtain a building permit when required by law or rule;
- (8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
- (9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
- (10) allowing one's license to be used by another except as provided by statute or rule;
- (11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~Fund Act;~~

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

~~[(20)] (18) wrongfully filing a preconstruction or construction lien in violation of Section 38-1a-308;~~

~~[(21)] (19) if licensed as a contractor, not completing the approved continuing education required under Section 58-55-302.5;~~

~~[(22)] (20) an alarm company allowing an employee with a temporary license under Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);~~

~~[(23)] (21) an alarm company agent under a temporary license under Section 58-55-312 engaging in conduct outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii);~~

~~[(24)] (22) (a) an unincorporated entity licensed under this chapter having an individual who owns an interest in the unincorporated entity engage in a construction trade in Utah while not lawfully present in the United States; or~~

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

~~[(25)] (23) an unincorporated entity failing to provide the following for an individual who engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an individual who engages, or will engage, in a construction trade in Utah for a separate entity for which the unincorporated entity provides the individual as labor:~~

~~(a) workers' compensation coverage:~~

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

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

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

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Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

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

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

(i) the contractor uses; and

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

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

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

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

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

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

Section ~~{14}~~19. Section **58-55-502** is amended to read:

58-55-502. Unprofessional conduct.

Unprofessional conduct includes:

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

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

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

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

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

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

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

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- (f) any reporting, notification, and filing laws of this state or the federal government;
- (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;
- (4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:
 - (a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or the owner's duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;
 - (b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee; and
 - (c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;
 - ~~[(d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;]~~
 - ~~[(e) failure to provide, when applicable, the information required by Section 38-11-108, and]~~
 - ~~[(f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;]~~
- (5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;
- (6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311;
- (7) failing to comply with operating standards established by rule in accordance with Section 58-55-308;

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

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

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

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

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

Section ~~{15}~~20. Section **58-55-503** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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been violated.

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

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

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

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

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

(iii) by mail.

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

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

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

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

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

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

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

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

and

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

(i) (i) For purposes of issuing a final order under this section and assessing a fine under

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Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~(19)~~] (22), (23), (24), (25), (26), or (27), [~~(28), or (29)~~]; or Subsection 58-55-504(2); or

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

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

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~(19)~~] (22), (23), (24), (25), (26), or (27), [~~(28), or (29)~~]; or Subsection 58-55-504(2); and

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

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

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501[~~(24)~~ or (25)](22) or (23) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501[~~(24)~~ or (25)](22) or (23) for each individual is considered a separate violation.

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

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each

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violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

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

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

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

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

Section ~~16~~21. Section **58-56-9** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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(d) issue a public or private reprimand;

(e) issue a citation to a licensee; and

(f) issue a cease and desist order.

Section ~~{17}~~22. Section **58-56-9.3** is amended to read:

58-56-9.3. Unprofessional conduct.

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

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

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

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

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

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

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

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

(8) a building inspector knowingly failing to report to the division an act or omission of a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when left uncorrected constitutes a hazard to public health and safety;

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

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

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authorized by the licensed architect, professional engineer, or both;

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

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

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

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

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

Section ~~{18}~~23. Section **58-56-9.4** is enacted to read:

58-56-9.4. Investigation of regulated activity.

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

(2) An investigation by the division may include:

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

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

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

Section ~~{19}~~24. Section **58-56-9.5** is amended to read:

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

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

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

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

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

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

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

(ii) attempt to negotiate a stipulated settlement; or

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

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

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

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

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

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

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

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

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

(iii) by mail.

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

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

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

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

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

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

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

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

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

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

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

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

(B) no final order has been issued by the division in the action initiated under Subsection (3)(j)(ii)(A);

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

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

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Subsection (3)(j)(ii)(A).

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

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

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

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

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

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

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

Section ~~{20}~~25. Section **63I-2-238** is enacted to read:

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

~~{Section 38-11-103 is repealed January 1, 2019.~~

~~Section 21~~**Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, is repealed July 1, 2020.**

Section 26. Section **63J-1-504** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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(a) reasonable, fair, and reflect the cost of services provided; and
(b) established according to a cost formula determined by the executive director of the Governor's Office of Management and Budget and the director of the Division of Finance in conjunction with the agency seeking to establish the fee.

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

(a) set fees by rule; or

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

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

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

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

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

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

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

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

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

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

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

(iii) the fee agency submits the fee schedule for the new program to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual general session of the Legislature, whichever is sooner; or

~~[(b) the Division of Occupational and Professional licensing makes a special assessment against qualified beneficiaries under the Residence Lien Restriction and Lien~~

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Recovery Fund Act as provided in Subsection 38-11-206(1); or]

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

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

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

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

(i) the title or purpose of the fee;

(ii) the present amount of the fee;

(iii) the proposed new amount of the fee;

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

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

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

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

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

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

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

(8) (a) Except as provided in Subsection (8)(b), the School and Institutional Trust Lands Administration, established in Section 53C-1-201, is exempt from the requirements of this section.

(b) The following fees of the School and Institutional Trust Lands Administration are subject to the requirements of this section: application, assignment, amendment, affidavit for

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lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

Section ~~{22}~~27. **Repealer.**

This bill repeals:

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

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

~~{~~ ~~Section **38-11-104, Board.**~~

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

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

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

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

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

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

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

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

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

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

~~}~~ Section **38-11-205, Subrogation.**

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

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

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

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

~~{~~ ~~Section **23. Effective date.**~~

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

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~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel~~